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The Practice

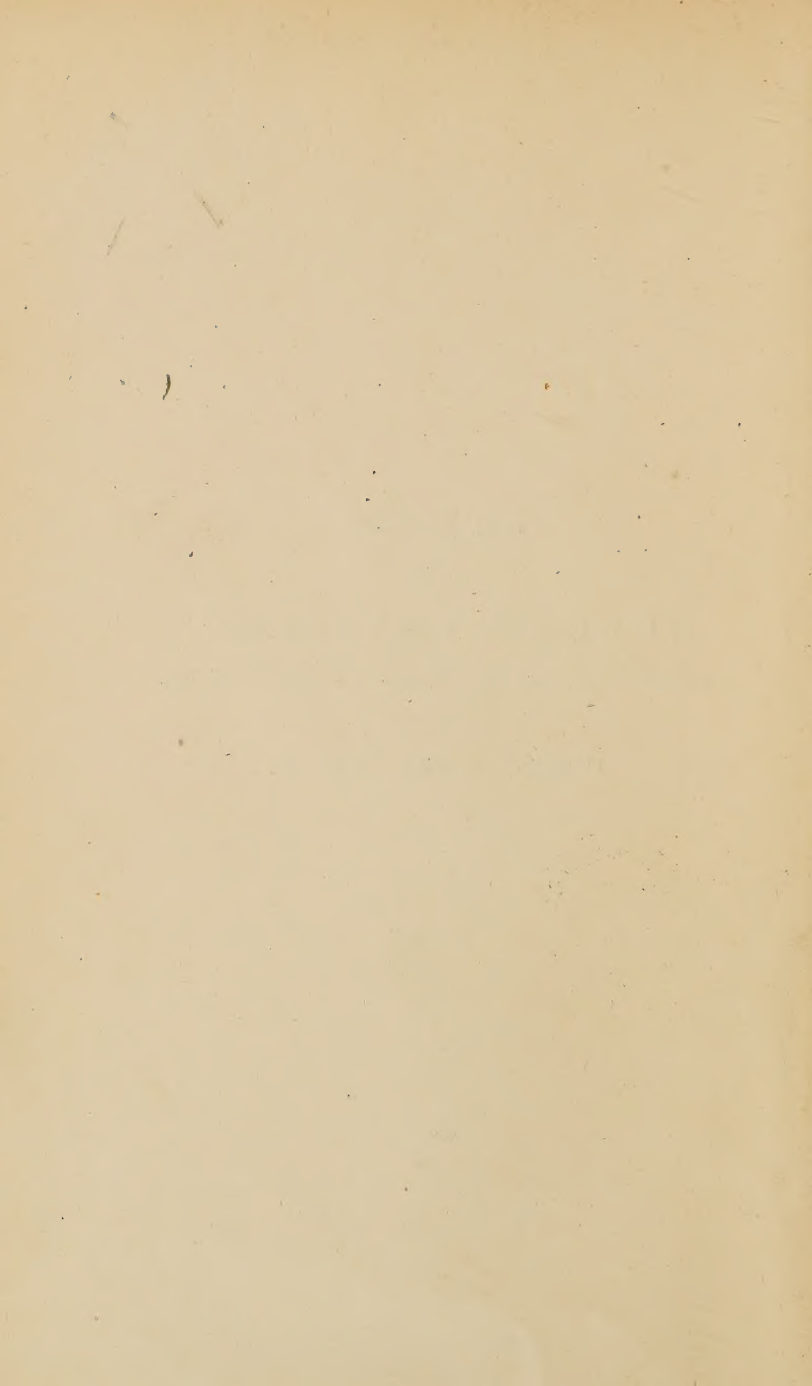
AT THE

JUDGES' CHAMBERS,

Queen's Bench, Common Pleas and Exchequer Divisions,

AND IN THE

DISTRICT REGISTRIES.



THE PRACTICE
AT THE
JUDGES' CHAMBERS,
Queen's Bench, Common Pleas & Exchequer Divisions,
AND IN THE
DISTRICT REGISTRIES,
UNDER THE
SUPREME COURT OF JUDICATURE ACTS OF 1873, 1875;
AND OTHER STATUTES;

WITH AN
Appendix of the Judicature Acts,
AND THE RULES AND ORDERS TO JUNE, 1876.



BY
WILLIAM E. COE,
PRINCIPAL CLERK TO THE HON. MR. JUSTICE LUSH.

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TO THE
HON. MR. JUSTICE LUSH,

This Book

IS

(BY PERMISSION)

MOST RESPECTFULLY DEDICATED

BY HIS OBEDIENT SERVANT

WILLIAM E. COE.

P R E F A C E.

THE object the Author of this Work (which has little pretension beyond a compilation) has in view, is twofold—first, to facilitate the despatch of business at Chambers; and secondly, to show the mode of procedure in the District Registries. The former, by arranging under each head the various Sections, Rules and Orders relating to the subject, and in relation to each other; thus avoiding the necessity of having to refer from one part of the act to another, and so saving time and trouble. The latter, because country practitioners are generally unacquainted with the detail of the mode of procedure in the Judges' Chambers, and consequently are at a loss to know what to do in the District Registry, where the proceedings are identical and are governed by the same rules.

The plan is simple.

The general practice at the Chambers is first explained and then applied to the Registries.

The various Applications and Summonses are dealt with separately, and the Rules and Orders, together with Reports of Decisions relating to them, arranged in the order in which they are required.

The majority of the cases cited are from the reports in the "Law Times" by A. H. Bittleston, Esq.; but of the reports of the decisions of Mr. Justice Lush, although in many instances adopting the language of the "Law Times," I would wish to take the entire responsibility, as they are from notes of my own, compared with the reports, and the reference is given simply because the latter are fuller than could be given in a work of this description.

The proceedings in Chambers under the Bills of Exchange Act, the County Courts Act, the Interpleader Acts and the Debtors Act of 1869 are sufficiently dealt with for practical purposes, and with regard to the latter act I cannot refrain from suggesting whether it would not be desirable to extend the jurisdiction of the Masters and District Registrars to the hearing and determining upon the summons taken out in the first instance, when the question to be determined is rarely more than the amount and frequency of instalments the judgment debtor is in a position to pay,—a large saving of

expense to all parties would thus be frequently effected.

A number of common applications, such as for particulars, &c., being of a simple nature, are not noticed.

An Appendix of the Judicature Acts is added for the purpose of reference.

The Index has been carefully compiled with regard to its use for Chambers only, but it may be found a useful, although not intended to be, index to the statutes.

W. E. C.

7, OSENEY CRESCENT,
LONDON, N.W.

September, 1876.

CONTENTS.

TABLE OF CASES	PAGE .. xiii
TABLE OF STATUTES	.. xvi
PRACTICE AT THE JUDGES' CHAMBERS	1
PRACTICE AT DISTRICT REGISTRIES	14
THE PRACTICE GENERALLY :	
Affidavits	31
Applications for Time	34
Substituted Service of Writ	37
To serve Writ out of the Jurisdiction	39
Leave to serve Notice of Motion with Writ	44
To amend Indorsement on the Writ	44
Leave to renew the Writ	45
To set aside the Writ	48
To appear and defend in Ejectment	48
To appear and defend to Bill of Exchange	49
To sign final Judgment where Writ specially indorsed	51
To sign Judgment in Ejectment	57
To set aside Judgment	58
Appointment of Next Friend	59
To add, strike out, or substitute Parties	62
Change of Parties by Death, &c.	67
For leave to give Notice of Contribution or Indemnity	69
To separate several Causes of Action joined	75
To strike out Counter-claim	78
Leave to Plead	81
To amend Pleadings	83
To set aside Demurrer	87
To settle Issues	88
To pay Money into Court in Satisfaction	89
To dismiss Action for want of Prosecution	90
To deliver Interrogatories	91
To strike out Interrogatories	97
To discover Documents	98
To inspect Documents	101
For a Special Case	105

THE PRACTICE GENERALLY— <i>continued.</i>	PAGE
To change the Venue	107
To examine Witness <i>vivâ voce</i>	108
To countermand Notice of Trial	109
To refer to Master	110
To refer to an official or special Referee	111
Reference by Consent	115
To transfer Action from one Division to another.. .. .	117
To consolidate Actions	126
Proceedings under the County Court Acts.. .. .	127
To stay Proceedings by Prohibition	131
Injunction	133
For Sale of perishable Goods	136
For Detention, Preservation and Inspection of Property, Samples and Experiments.. .. .	136
To set down Motion for Judgment	138
Leave to issue Execution in certain Cases	140
Attachment of Debts	142
Charging Stock	148
Interpleader	151
Proceedings under the Debtors Act, 1869	159
To set aside Proceedings for Irregularity	168
To rectify Omissions or Mistakes in the Register under the Joint Stock Companies Acts	169
Leave to sue <i>in formâ pauperis</i>	170
For Prisoner to give Evidence	171
To admit Prisoner to Bail	172
Bills of Costs	173
Reviewing Taxation	178

APPENDIX:

The Supreme Court of Judicature Act, 1873	181
" " " 1875	203
Rules of the Supreme Court	211
Additional of August, 1875 (Costs)	260
of December, 1875	267
of February, 1876	267
of June, 1876	268
Special Allowances	264

INDEX	269
---------------	-----

TABLE OF CASES.

ABBREVIATION :—L. T. J. C.....*Law Times (Judges Chambers) Reports.*

A.

	PAGE
Anderson <i>v.</i> Boynton	126
Armitage <i>v.</i> Fitzwilliam	38
Askew <i>v.</i> North Eastern Railway Co.	85
Atwood <i>v.</i> Miller	80

B.

Baker <i>v.</i> Bank of Australasia	152
——— <i>v.</i> Newton	98
Bannicot <i>v.</i> Harris	98
Belcher <i>v.</i> Smith	152
Berry <i>v.</i> Exchange Trading Co.	4
Blewitt <i>v.</i> Dowling	133
Braddick <i>v.</i> Smith	152
Brown <i>v.</i> Emerson	111
——— <i>v.</i> Hartley	72
Bustros <i>v.</i> White	99

C.

Carter <i>v.</i> Leeds Daily News Co.	93
Cooper <i>v.</i> Ince Hall Co.	137
Crowther <i>v.</i> Du Gillon	86

D.

Davies <i>v.</i> Garland	47
Dawes <i>v.</i> Thornton	72
Dent <i>v.</i> Dent	144
Disney <i>v.</i> Longbourne	93
Doyle <i>v.</i> Anderson	126
——— <i>v.</i> Douglas	126
Duncan <i>v.</i> Vereker	85

E.

Edwards <i>v.</i> Lowther	65
Evans <i>v.</i> Gan	80
——— <i>v.</i> Wills	164

F.							PAGE
Fenner <i>v.</i> Bedford ..	..	..	..	..	..	..	134
Fray <i>v.</i> Voules ..	..	..	..	..	..	..	171
G.							
General Steam Navigation Co. <i>v.</i> London and Edinburgh Co. ..	..	..	..	..	..	..	125
Goldring <i>v.</i> Wharton Salt Works Co. ..	..	..	..	..	..	..	85, 86
H.							
Haley <i>v.</i> Barry ..	..	..	..	..	..	..	151
Hartley <i>v.</i> Owen ..	..	..	..	..	..	..	97
Hawley <i>v.</i> Reade ..	..	..	..	..	..	..	93
Hirsch <i>v.</i> Coates ..	..	..	..	..	..	..	145
Hollingsworth <i>v.</i> Brodrick ..	..	..	..	..	..	..	126
Holt <i>v.</i> Forshall ..	..	..	..	..	..	..	10
Humphreys <i>v.</i> Edwards ..	..	..	..	..	..	..	124
I.							
Ireland <i>v.</i> Bushell ..	..	..	..	..	..	..	152
J.							
Johnson <i>v.</i> Diamond ..	..	..	..	..	..	..	145
——— <i>v.</i> Whitehead ..	..	..	..	..	..	..	23
Jones <i>v.</i> Turner ..	..	..	..	..	..	..	85
K.							
Kendill <i>v.</i> Bennett ..	..	..	..	..	..	..	111
L.							
Lee <i>v.</i> Colyer ..	..	..	..	..	..	..	80
Lerearley <i>v.</i> Harrison ..	..	..	..	..	..	..	65
Liverpool and Brazil Co. <i>v.</i> St. Katherine's Steam Navigation Co. ..	..	..	..	..	..	..	78
Lloyd's Banking Co. <i>v.</i> Ogle ..	..	..	..	..	..	..	55
Lovell <i>v.</i> Holland ..	..	..	..	..	..	..	65
M.							
M'Corquoidale <i>v.</i> Bell ..	..	..	..	..	..	..	100
Macdonald <i>v.</i> Bode ..	..	..	..	..	..	..	80
Makin <i>v.</i> Barrow ..	..	..	..	..	..	..	135
Margate Pier Co. <i>v.</i> Perry ..	..	..	..	..	..	..	57
Marsh <i>v.</i> Mayor of Pontefract ..	..	..	..	..	..	..	85
Mason <i>v.</i> Muggeridge ..	..	..	..	..	..	..	143
Measures <i>v.</i> Thomas ..	..	..	..	..	..	..	72
Mercantile River Plate Bank <i>v.</i> Isaac ..	..	..	..	..	..	..	64
Metropolitan Board of Works <i>v.</i> New River Co. ..	..	..	..	..	..	..	106
Miller <i>v.</i> Mynn ..	..	..	..	..	..	..	144
Millisich <i>v.</i> Lloyd ..	..	..	..	..	..	..	77

TABLE OF CASES.

XV

						PAGE
Millman <i>v.</i> Mayhew	..	..	..	..	..	117, 124
Mitchell <i>v.</i> Lee	..	..	..	..	..	144
Moorhouse <i>v.</i> Colville	..	..	..	..	..	85
N.						
Nazer <i>v.</i> Wade	..	..	..	..	..	47
Nicholson <i>v.</i> Jackson	..	..	..	..	..	81
O.						
Oake <i>v.</i> Moorcroft	..	..	..	..	..	50
Oger <i>v.</i> Bradnum	..	..	..	..	..	21, 50
Oxlade <i>v.</i> North Eastern Railway Co.	..	..	..	..	..	92
P.						
Padwick <i>v.</i> Scott	..	..	..	..	..	125
Pitten <i>v.</i> Chatterburg	..	..	..	..	..	98
Plum <i>v.</i> Normanton Iron Co.	..	..	..	..	..	108
Price <i>v.</i> Hayman	..	..	..	..	..	33
R.						
Restall <i>v.</i> Steward	..	..	..	..	..	85
Runnacles <i>v.</i> Mesguitu	..	..	..	..	..	57
S.						
Sarjeant <i>v.</i> Brown	..	..	..	..	..	10
Slaney <i>v.</i> Sidney	..	..	..	..	..	152
Smurthwaite <i>v.</i> Richardson	..	..	..	..	..	116
Swansea Shipping Co. <i>v.</i> Duncan	..	..	..	..	..	71
T.						
Tebbs <i>v.</i> Lewis	..	..	..	..	..	72
Tozer <i>v.</i> Walford	..	..	..	..	..	135
Turner <i>v.</i> Jones	..	..	..	..	..	147
V.						
Vandenbyl <i>v.</i> M'Kenna	..	..	..	..	..	116
W.						
Wavell <i>v.</i> National and Provincial Bank of England	..	..	..	..	..	80
Westman <i>v.</i> Sniderfabrick	..	..	..	..	..	39
Winters <i>v.</i> Dabbs	..	..	..	..	..	98
Wintle <i>v.</i> Williams	..	..	..	..	..	146
Y.						
Young <i>v.</i> Brassey	..	..	..	..	..	41, 43

TABLE OF STATUTES.

	PAGE
1 & 2 Will. 4, c. 58	155
1 & 2 Vict. c. 110	148
3 & 4 Vict. c. 82	149
6 & 7 Vict. c. 73	173
16 & 17 Vict. c. 30.. .. .	171
17 & 18 Vict. c. 125	92—110
18 & 19 Vict. c. 67.. .. .	50
19 & 20 Vict. c. 108	130
23 & 24 Vict. c. 126	154
25 & 26 Vict. c. 89.. .. .	169
30 & 31 Vict. c. 68.. .. .	5
————— c. 142	127
32 & 33 Vict. c. 62.. .. .	159
33 & 34 Vict. c. 30.. .. .	144
35 & 36 Vict. c. 44.. .. .	150
38 & 39 Vict. c. 79.. .. .	173

ERRATA.

- Page 28, line 2 from bottom, “August” *should read* “December.”
- „ 30, line 17 from bottom, “August” *should read* “December.”
- „ 45, line 17 from top, “June” *should read* “February.”

The Practice

AT

THE JUDGES' CHAMBERS

(*Queen's Bench, Common Pleas & Exchequer Divisions*)

AND IN THE

DISTRICT REGISTRIES.

THE JUDGES' CHAMBERS.

Ord. LXI. r. 4.] The Judges' Chambers Chambers,
when open.
are open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

The hours of attendance are between eleven and four, Hours of at-
tendance.
excepting during the Christmas, Easter and Whitsun vacations, when the hours are from eleven to three, and during the Long vacation from eleven to two.

On Saturdays the chambers close at two o'clock.

Ord. LXI. r. 2.] The vacations to be Vacations.
observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas

vacation, the Easter vacation, and the Whitsun vacation.

The Long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday, and the Whitsun vacation shall commence on the Saturday before Whit Sunday and shall terminate on the Tuesday after Whit Sunday.

Attendance of
judge and
masters.

A judge (occasionally two) and three masters attend daily at eleven, and remain until the business of the day is concluded; and while they are sitting the chambers remain open for the transaction of all business, notwithstanding that the usual hour for closing has passed.

Attendance of
judge and
master during
vacation.

During the Long vacation a judge and one master attends but two days in each week, usually Tuesdays and Fridays.

Jurisdiction of
judge.

36 & 37 *Vict. c. 66, s. 39.*] Any judge of the said High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this act might have been heard in court or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any rules of court to be hereafter made.

Mr. Justice Lush in his "Practice,"* thus defines the jurisdiction of a judge at chambers. "The Common Law," he says, "appears to vest in a single judge the same equitable jurisdiction, over the proceedings in a cause, which it vests in the court of which he is a constituent member. His act is potentially the act of the court; for although he cannot directly enforce the orders he makes, or exercise what may be termed the prerogative powers of the court, yet the court will adopt his orders, and for disobedience thereto, when so adopted, will issue process of attachment as if the matter had been originally ordered by the court itself."

36 & 37 *Vict. c. 66, s. 49.*] No order made by the High Court of Justice or any judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the court, shall be subject to any appeal, except by leave of the court or judge making such order.

Orders not subject to appeal.

36 & 37 *Vict. c. 66, s. 50.*] Every order made by a judge of the said High Court in chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

Discharging judge's order.

A judge will entertain an application to vary or discharge his own order, but will in no way interfere with the decision

To vary judge's order.

* Book II. c. xvii.

Notice of motion to vary judge's order.

of another judge. The proper course is to apply by summons to the same judge or to the court, after giving notice to the opposite side of the intention to do so.

After notice of intention to move to rescind an order giving leave to sign judgment, the party giving the notice failed to appear. The opposite party appearing, the Court ordered that they should be paid their costs of appearing. (*Berry v. Exchange Trading Co.*, 45 L. J., 221) 4/

Jurisdiction of master.

Ord. LIV. r. 2.] In the Queen's Bench, Common Pleas, and Exchequer Divisions a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the act, or the schedule thereto, or these rules, may be transacted or exercised by a judge at chambers, except in respect of the following proceedings and matters; that is to say,—

Proceedings and matters out of master's jurisdiction.

All matters relating to criminal proceedings or to the liberty of the subject:

The removal of actions from one division or judge to another division or judge:

The settlement of issues, except by consent:

Discovery, whether of documents or otherwise, and inspection, except by consent:

Appeals from district registrars:

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent:

Prohibitions:

Injunctions and other orders under sub-section 8 of section 25 of the act, or under Order LII., rules 1, 2, and 3 respectively:

Awarding of costs, other than the costs of any proceeding before such master:

Reviewing taxation of costs:

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof:

Acknowledgments of married women.

Ord. LIV. r. 2a.—Rule 19 of June, 1876.]

The authority and jurisdiction of the district registrar, or of a master of the Queen's Bench, Common Pleas, or Exchequer Divisions, shall not extend to granting leave for service out of the jurisdiction of a writ of summons or of notice of a writ of summons.

The masters had, by virtue of the *Regulæ Generales* of Michaelmas Term, 1867, made in pursuance of the 30 & 31 Vict. c. 68, the Judges Chambers (Despatch of Business) Act, substantially the same powers before the passing of the Judicature Act. There are, however, several things the masters may now do by consent, which before they were unable to do.

Ord. LIV. r. 3.] If any matter appears to the master proper for the decision of a judge the master may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit. Master may refer to judge for directions.

Ord. LIV. r. 4.] Any person affected by any order or decision of a master may appeal therefrom to a judge at chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a judge or master. Appeal from master's order.

Summons. The form of summons is:—To show cause why (on appeal from Master A. B.); then follow the words of the summons adjudicated upon by the master.

Materials. The application is usually determined by the judge upon the same materials used before the master; but as every appeal is now a rehearing, held by Quain, J., that fresh affidavits may be used and fresh facts gone into; L. T., J. C. 150.

This ruling has been held by other judges and confirmed by the court.

To vary or rescind master's order. To vary or rescind the order of a master, may be heard before the same master in the first instance, and in such cases is generally heard upon fresh materials.

Appeal from master no stay. *Ord. LIV. r. 5.]* An appeal from a master's decision shall be no stay of proceedings unless so ordered by a judge or master.

Time of appeal on motion to discharge order. *Ord. LIV. r. 6.]* In the Queen's Bench, Common Pleas and Exchequer Division every appeal to the court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against.

Notice to produce affidavits used, required to be in court. Care must be taken that the affidavits are forwarded to the court, by giving notice to the judge's clerk, or in case they have been forwarded by him to the rule office, notice to the clerk of the rules.

Proceedings at chambers. The proceedings at chambers are of two kinds:—1. *Ex parte*, and 2. By summons.

Ex parte applications. *Ex parte* applications are invariably made upon affidavits which should be left with the judges' clerk, who will place them before the judge or master. They will be ready for delivery soon after the arrival of the judge on the following day.

Every affidavit used must be properly indorsed and must state the nature of the application upon the outside.

If the application is of an urgent nature it may be made at once, and, if desired, by counsel.

All summonses are issued by the clerk in the name of a judge. They should be properly entitled in the cause, and the time and place of their return must be clearly indicated.

Summons, how issued.
Title.

The date of its issue ought to appear upon the face of it.

Date.

They are in most instances made returnable the following morning, at eleven o'clock.

When returnable.

A summons should express in full the terms of the order sought, so that a mere marked consent may entitle the applicant to all he wants. For in such a case the order is in form the affirmative of the summons. It is in the nature of a rule nisi, so far as it is the means of bringing the opposite party as it were before the court, and so far as it operates to stay his proceedings, but is a stay only from the hour at which it is made returnable and then only when it is part of the application (why in the meantime all further proceedings should not be stayed), unless where the applicant has to take the next step, when a stay is necessarily implied.

Contents.

When a stay.

A copy must be served on the solicitor for the opposite party by leaving the same at his office before seven o'clock in the evening or two o'clock on Saturdays.

Service.

Ord. IV. r. 1.] The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the

Address for service of plaintiff's solicitor.

name or firm and place of business of the principal solicitor.

Address for
service of
plaintiff in
person.

Ord. IV. r. 2.] A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications, may be left for him.

[*The above two rules are to apply to all cases in which the writ of summons is issued out of the London office.*]

Address for
service of de-
fendant's
solicitor.

Ord. XII. r. 7.] The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar; and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

Address for
service of de-
fendant in
person.

Ord. XII. r. 8.] A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar; and if the

appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

By the rules of the Court of Common Pleas at Lancaster, the jurisdiction of which court is now transferred to the High Court, the copy summons has to be served before five o'clock. This rule is still in force, but applies only to service within the district of the registry of Preston, Liverpool and Manchester.

Hours for service of summons, Lancashire.

The solicitor issuing the summons must attend punctually at the hour of the return, and wait half-an-hour for his opponent; and if he fails to appear, an affidavit of service and attendance must be prepared, upon which an *ex parte* application is made to the judge or master, according to its nature, who will in most cases grant the order sought.

Attendance in support of summons.

The affidavit must state :—

That the copy summons was served at the office of (plaintiff's or defendant's) solicitor, or address for service before seven o'clock (or on Saturday two o'clock).

Affidavit of service and attendance.

That deponent attended at the chambers of the Honourable Mr. Justice ——— (judge in whose name the summons is issued) at eleven o'clock, and waited half-an-hour, and that no one attended on behalf of the (plaintiff or defendant).

If the solicitor fails to attend in support of the summons, and his opponent attends, the summons drops, and the solicitor summoned can then take out a summons, to show cause why he should not be paid the costs of attendance on summons for, &c. and of this application.

Non-attendance in support of summons.

Summons for costs through non-attendance.

Special Allowances, Aug. 1875, r. 11.] As to attendances at the judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper

evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Copy of affidavit in support to be given to other side.

If an affidavit is to be used in support of the summons, a copy is required to be first given to the party called on to show cause. Copies of the affidavits in reply are frequently given as a matter of courtesy, but not as a matter of right.

Adjournment of summons.

By order of the judge, for fresh materials, or by the consent of both parties, a summons can stand over till another day, and this will bind, so far as to continue the stay of proceedings, until that day (*Sarjeant v. Brown*, 2 Dowl. N. S. 985); and if the party called on to show cause does not then attend, the applicant is entitled to an order, upon an affidavit of the facts, and of the non-attendance at and for half-an-hour after the adjourned time, whilst if the applicant does not attend no order can be made (*Holt v. Forshall*, 3 C. L. R. 155; 3 W. R. 107). If both attend, and there be no judge at chambers, the summons stands adjourned of itself.

Ord. LIII. r. 5.] If on the hearing of a motion or other application the court or judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the court or judge may think fit to impose.

Ord. LIII. r. 6.] The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the court or judge shall think fit.

Summonses can be attended by counsel.

Attendance by

Notice of the intention so to attend must be given to the opposite side, by endorsing upon the copy summons "We shall attend this summons by counsel," or by a notice sent afterwards from either party.

counsel.
Notice of intention.

Summonses so attended are heard at an hour fixed by the judge in attendance (generally half-past twelve), and the return is thus delayed till the time fixed.

Hour of attendance.

The judge endorses upon the back of the summons his order, together with directions as to costs. He will also certify for counsel, upon request, in cases which he thinks justifies their attendance.

Judge's endorsement.
Certificate for counsel.

The latter certificate is simply a direction to the master in taxing the costs.

Special Allowances, Aug. 1875, r. 14.] As to counsel attending at judges' chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

Costs of counsel.

The judges' endorsement on the back of the summons is simply a direction to his clerk, who will draw up the order in proper form, a copy of which must be served upon the opposite side, or it will be treated as abandoned.

Judge's order.
Service of order.

The party in whose favour the order is made has the carriage thereof, and the judge generally hands the summons to him to draw up.

Carriage of order.

The same practice applies to masters; their orders are drawn up by the judges' clerks, in the master's name.

In important matters additional costs may be allowed.

Special Allowances, Aug. 12, 1875, r. 10.] As to attendances at the judges' chambers,

Increased costs for attendance.

where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the above fees* an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee in lieu of the fee of 1*l.* 1*s.* above provided,* not exceeding 2*l.* 2*s.*, or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the above fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Attendance of *Special Allowances, Aug. 12, 1875, r. 21.]*

* On a summons at judges' chambers, 6*s.* 8*d.*; or, according to circumstances, not to exceed 1*l.* 1*s.* Rules of Supreme Court (Costs), 12th August, 1875.

Where any party appears upon any application or proceeding in court or at chambers, in which he is not interested, or upon which, according to the practice of the court, he ought not to attend, he is not to be allowed any costs of such appearance unless the court or judge shall expressly direct such costs to be allowed. party not interested.

THE DISTRICT REGISTRIES.

THE establishment of district registries enables all proceedings in an action to be carried on in the country, thus saving the expense of employing agents,—a necessity when everything had to be done in London.

The Judicature Act commences the subject with sect. 60, which makes it lawful for the Privy Council to establish district registries in different parts of the country.

Her Majesty
may establish
district regis-
tries in the
country for
the Supreme
Court.

36 & 37 *Vict. c. 66, s. 60.*] And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for her Majesty, by order in council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and her Majesty may thereby appoint that any registrar of any county court, or any registrar or prothonotary or district prothonotary of any local court whose jurisdiction is hereby transferred to the said High Court of

Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this act.

The following amendment to this section was made by the Amendment Act of 1875:—

38 & 39 *Vict. c. 77, s. 13.*] Whereas by sect. 60 of the principal act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for her Majesty by order in council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

Amendment of
s. 60 of 36 &
37 *Vict. c. 66*,
as to district
registrars.

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars,

and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district, defined by such order (other than a county court) shall, if appointed by her Majesty, be qualified to be a district registrar for the said district or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

List of district
registries.

On the 12th of August, 1875, district registries were established at Manchester, Liverpool, Preston, Durham and the following places:—

Bangor.	Chester.
Barnsley.	Colchester.
Barnstaple.	Derby.
Bedford.	Dewsbury.
Birkenhead.	Dover.
Birmingham.	Dorchester.
Boston.	Dudley.
Bradford.	East Stonehouse.
Bridgewater.	Exeter.
Brighton.	Gloucester.
Bristol.	Great Grimsby.
Bury St. Edmunds.	Great Yarmouth.
Cambridge.	Halifax.
Cardiff.	Hanley.
Carlisle.	Hartlepool.
Carmarthen.	Hereford.
Cheltenham.	Huddersfield.

Ipswich.	Poole.
Kingston-on-Hull.	Portsmouth.
King's Lynn.	Ramsgate.
Leeds.	Rochester.
Leicester.	Sheffield.
Lincoln.	Shrewsbury.
Lowestoft.	Southampton.
Maidstone.	Stockton-on-Tees.
Newcastle-upon-Tyne.	Sunderland.
Newport, Monmouth.	Swansea.
Newport, Isle of Wight.	Truro.
Newtown.	Totnes.
Northampton.	Wakefield.
Norwich.	Walsall.
Nottingham.	Whitehaven.
Oxford.	Wolverhampton.
Pembroke Docks.	Worcester.
Peterborough.	York.

36 & 37 *Vict. c. 66, s. 61.*] In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof. Seals of district registries.

36 & 37 *Vict. c. 66, s. 62.*] All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the Powers of district registrars.

said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of court, or by any special order of the court.

Sect. 63, relating to fees to be taken, stands repealed.

Proceedings to be taken in district registries.

36 & 37 *Vict. c. 66, s. 64.*] Subject to the rules of court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken and if necessary may be recorded in the same district registry.

Power for court to remove

36 & 37 *Vict. c. 66, s. 65.*] Any party to

an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court, to the said High Court, or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.

proceedings
from district
registries.

36 & 37 *Vict. c. 66, s. 66.*] It shall be lawful for the court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to

Accounts and
inquiries may
be referred to
district regis-
trars.

carry all such directions into effect in the manner prescribed ; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the court, as to the court shall seem fit.

The judge at chambers sits as a judge of each division.

The following orders and rules are specifically applied to district registries:—

Ord. LXI. r. 4a.—Rule 15 of December, 1875.] The offices of each district registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the registrar of the county court of the place in which the district registry is situate are required to be kept open.

Plaintiff may
issue writ out
of any registry.

Ord. V. r. 1.] In any action other than a probate action, the plaintiff, wherever resident, may issue a writ of summons out of the registry of any district.

Plaintiff's
address for
service.

Ord. IV. r. 3a.—Rule 3 of February, 1876.] In all cases where a writ of summons is issued out of a district registry the solicitor shall give on the writ the address of the plaintiff, and his own name or firm and his place of business, which shall, if his place of business be within the district of the registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and where the

defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall give on the writ his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district; and where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from Temple Bar.

A writ under the Bills of Exchange Act may be issued from a district registry. (*Oger v. Bradnum*, 45 L. J. 273.)

Ord. V. r. 2.] In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

Ord. V. r. 3.] In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a

statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

When appearance to be entered in district registry.

Ord. XII. r. 2.] If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

Defendant residing out of the district.

Ord. XII. r. 3.] If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

By this rule defendant has the option of selecting where he will enter an appearance.

Ord. XII. r. 4.] If a sole defendant appears, or all the defendants appear, in the district registry, or if all the defendants who appear appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

It is to be observed that this is an imperative rule.

If appearance in London, action to proceed in London.

Ord. XII. r. 5.] If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the court or a judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

Ord. XII. r. 6, as substituted by Rule 5 of February, 1876.] A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

Notice to plaintiff of appearance.

A defendant who appears elsewhere than where the writ is issued, shall on the same day give notice of his appearance to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, either by notice in writing served in the ordinary way at the address for service within the district of the district registry, or by prepaid letter directed to such address, and posted on that day in due course of post.

Notice of appearance given to London agent of plaintiff's solicitor held sufficient. (*Johnson v. Whitehead*, L. T., J. C. 192.)

See address for service of defendants (p. 9).

Ord. XIII. r. 5a.—Rule 7 of December, 1875.] Where a defendant fails to appear to a writ of summons issued out of a district registry, and the defendant had the option of entering an appearance either in the district registry or in the London office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

Judgment for want of appearance.

Ord. XXXV. r. 1, as substituted by Rule 12 of June, 1876.] Where an action proceeds in the district registry, all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the court or a judge shall otherwise order, shall be taken in the district registry, down to and including final judgment; and every final judgment, and every order for an account by reason of the default of the defendant or by consent, shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where the writ of summons is issued out of a district registry, and the plaintiff is entitled to enter interlocutory judgment under *Ord. XIII. r. 6*, or where the action proceeds in the district registry, and the plaintiff is entitled to enter interlocutory judgment under *Ord. XXIX. r. 4 or 5*, in either case such interlocutory judgment, and when damages shall have been assessed, final judgment shall be entered in the district registry, unless the court or judge shall otherwise order.

Where an action proceeds in the district registry, final judgment shall be entered in such registry, unless the judge at the trial or the court or a judge shall otherwise order.

Actions in the Queen's Bench, Common Pleas, and Exchequer Divisions shall be entered for trial with the associates and not in the district registries.

Ord. XIX. r. 29.] Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

Ord. XXXV. r. 2.] Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

Judgment to be entered in London.

Ord. XXXV. r. 3.] Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the court or a judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the court or a judge shall otherwise order.

Ord. XXXV. r. 4.] Where an action proceeds in the district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a judge at chambers, except such as by these rules a master of the Queen's Bench, Common Pleas or Exchequer Divisions is precluded from exercising.

District registrar to have similar power to a master.

It is doubtful whether this rule refers to the district registrars (prothonotaries) of Manchester, Liverpool, Preston and Durham, who by sect. 78 of the act of 1873 retain the same power and authority they previously possessed.

By this rule it will be seen that all proceedings that can be taken before a master at chambers can be taken also before a district registrar. The same rules and the same practice prevails, and where anything hereafter is indicated as being done before a master it is to be taken that the same can be done before a district registrar, and reference is directed as to particular proceedings under their respective titles.

Ord. XXXV. r. 5.] Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these rules.

By summons. Before the passing of this act, the masters, whose powers at chambers were regulated by R. G., M. T. 1867, could not issue a summons, neither do they in fact now, but as *Ord. LIV.* gives to them the same power as a judge at chambers, with certain exceptions, the issuing of summonses not being one, it would appear they have the power although not exercising it. It is to be observed that *Ord. LIV.* is taken with some variations from the R. G., M. T. 1867, which if still in operation would prevent masters, and consequently district registrars, from issuing ordinary summonses, because their powers are given to them under the same rules, and with the same authority as the masters; but as sect. 33, sub-sect. 2, of the Act of 1875, repeals enactments inconsistent with these acts, and the rules of Michaelmas Term, 1867, being made in pursuance of an enactment, it would seem that these rules are obsolete.

District registrar may refer to a judge.

Ord. XXXV. r. 6.] If any matter appears to the district registrar proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

Ord. XXXV. r. 7.] Any person affected by any order or decision of a district registrar may appeal to a judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a judge or the registrar.

Appeal from district registrar.

There is no appeal from the decision of a master on a matter heard by him by consent.

Ord. XXXV. r. 8.] An appeal from a district registrar shall be no stay of proceedings unless so ordered by a judge or the registrar.

Appeal no stay unless ordered.

The three preceding rules are similar to rules 3, 4 and 5 of *Ord. LIV.*, relating to appeals from masters; and for the mode of proceeding, refer to them, p. 5.

Ord. XXXV. r. 9.] Every district registrar and other officer of a district registry shall be subject to the orders and directions of the court or a judge as fully as any other officer of the court, and every proceeding in a district registry shall be subject to the control of the court or a judge, as fully as a like proceeding in London.

District registrar subject to the orders of the court.

Ord. XXXV. r. 10.] Every reference to a judge by or appeal to a judge from a district registrar in any action in the Chancery Division shall be to the judge to whom the action is assigned.

Defendant
may remove
action from
district regis-
try in certain
cases as of
right.

Ord. XXXV. r. 11.] In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following:—

Where the writ is specially indorsed under *Ord. III. r. 6*, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under *Ord. XIV.*, then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

Where the writ is specially indorsed, and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by *Ord. XIV.*, then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence, and before the expiration of the time for doing so:

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

Ord. XXXV. r. 11a.—*Rule 10 of August, 1875.*] In an Admiralty action *in rem*, any

person who may have duly intervened and appeared may remove an action from a district registry as of right.

Ord. XXXV. r. 12.] Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the court or a judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such court or judge may order that the action may proceed in the district registry notwithstanding such notice.

Notice of desire to remove action to be given.

The last preceding rule refers to rule 11.

Ord. XXXV. r. 13.] In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the court or a judge, or to the district registrar, for an order to remove the action from the district registry to London, and such court, judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Application to remove at the instance of either party.

Any party to an action proceeding in London may apply to the court or a judge for an order to remove the action from London to any district

registry, and such court or judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

The application must be by summons.

Under this rule an application can be made at chambers to remove an action from London to a district registry. See sect. 65, p. 18.

District registrar to transmit documents.

Ord. XXXV. r. 14.] Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

District registrar to account for moneys received by him.

Ord. XXXV. r. 15—(*Rule 11, August, 1875*).] Every district registrar shall account for and pay over to the Treasury all moneys paid into court at the registry of which he is registrar, in such manner and at such times as may be from time to time directed by the Treasury.

Special Allowances, Aug. 1875, r. 34.] When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

THE
PRACTICE GENERALLY.

Affidavits.

As affidavits are required in almost every proceeding, it seems fitting that some general observations should, in the first place, be made respecting them.

Forms of affidavits for particular purposes will be found under their respective titles.

Ord. XXXVII. r. 2.] Upon any motion, Deponent may
petition, or summons evidence may be given by be cross-
affidavit; but the court or a judge may, on the examined.
application of either party, order the attendance
for cross-examination of the person making any
such affidavit.

Every affidavit used at chambers must be divided into paragraphs, each paragraph numbered consecutively and as
nearly as may be confined to a distinct portion of the sub- Must be di-
ject. vided into
paragraphs,

They must, as a general rule, be entitled in the cause, and all statements contained therein must be clear and unambiguous, and in the first person.

Ord. XXXVII. r. 3.] Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his

belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Name, &c. of deponent.

The name in full, together with the address and occupation of the deponent, must be inserted; and if either of these be omitted, the affidavit will be irregular, unless the deponent is a party to the cause, when the description "the above-named plaintiff" or "defendant" has been held sufficient.

They can be sworn before any commissioner excepting the solicitor in the cause or his clerk. All the judges' clerks are commissioners for this purpose.

Jurats.

Great care must be taken that the jurat is accurately written, for by rule 140 of Hilary Term, 1853, "No affidavit shall be made use of in any matter depending in court, in the jurat of which there shall be any interlineation or erasure." It should be written in the left-hand corner of the affidavit.

The forms of jurat applicable to the judges' chambers are,—

"Sworn at the judges' chambers, Rolls Gardens, Chancery Lane, this day of , 1876, before me."

If deponent illiterate or a marksman,—

Marksman.

"Sworn by the deponent, A. B., at the judges' chambers, Rolls Gardens, Chancery Lane, before me this day of , 18 , the affidavit having been first read in my presence to the said A. B., who seemed perfectly to understand the same, and also wrote his mark (or signature) in my presence."

If a foreigner,—

Foreigner.

"This affidavit was read over and explained to the deponent, A. B., in the language by C. D., of , the said C. D. being first duly sworn before me truly and faithfully to interpret the same and the oath to be administered to the said deponent thereon; and the said deponent was afterwards, by the interpretation of the said C. D., sworn to the truth thereof at the judges' chambers, Rolls Gardens, Chancery Lane, this day of , 18 , before me."

Special Allowances, Aug. 12, 1875, r. 4.]

As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Documents referred to in an affidavit need not be annexed, Exhibits. but when not annexed they must be produced and marked at the time of swearing by the commissioner as the document referred to in the affidavit of A. B. marked A. sworn on the, &c.

Ord. LVI. r. 3.] Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

Before being used they must be filed with the clerk in Filing. attendance, and must bear the necessary stamp, 2s., for that purpose. If a party having used an affidavit without filing it, declines after request to do so, the court will compel him, and order him to pay the costs of the application. (*Price v. Hayman*, 4 M. & W. 8.)

If an affidavit or any other document on the files of the court be required for the purposes of evidence, an order can be obtained ex parte from the master, on the application of a solicitor (in ordinary cases without affidavit) that the officer be at liberty to take it off the file and deliver it to a person named upon the undertaking of the solicitor to return it as soon as conveniently may be after the trial, &c. is over, and upon filing an office copy in the meanwhile. To take documents, &c. off the file.

Particular attention is directed to the following rule:—

Special Allowances, Aug. 12, 1875, r. 18.] Affidavits of unnecessary length.

The court or judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit,

evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the court or judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

Office copies.

Office copies of affidavits can be had upon application to the clerk with whom they have been filed, or at the rule office if removed there.

Applications for Time.

Master.

Applications for time are so numerous, it is neither practicable nor necessary to notice them separately. It is enough to point out the practice in one case which is applicable to all.

Power of judge
to enlarge or
abridge time.

Ord. LVII. r. 6.] A court or a judge shall have power to enlarge or abridge the

time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

The application is by summons to show cause why (for instance) the defendant should not have a month's time to deliver his statement of defence in this action. Summons.

Special Allowances, Aug. 12, 1875, r. 22.]

Costs of application for time.

As to applications to extend the time for taking any proceeding limited by rules of court (subject to any special order as to the costs of and occasioned by any such application), the costs of one application are, without special order, to be allowed as costs in the cause or matter, but (unless specially ordered) no costs are to be allowed of any further application to the party making the same as against any other party, or any estate or fund in which any other party is interested.

The summons should be taken out before the expiration of the time for doing any act or taking any proceeding, but if returnable at its expiration, it is in time.

By *Regulæ Generales* of Hilary Term, 1853, r. 174. "In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the court, the same shall be reckoned exclusively of the first day, and inclusively of the last day."

Ord. LVII. r. 3.] Where the time for doing any act or taking any proceeding expires Time when expiring on Sunday, or

when office
closed.

on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

Months are
calendar
months.

Ord. LVII. r. 1.] Where by these rules, or by any judgment or order given or made after the commencement of the act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

Day not
reckoned in
computation
of time.

Ord. LVII. r. 2.] Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day and Good Friday shall not be reckoned in the computation of such limited time.

Long vacation.

Ord. LVII. r. 5.] The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless otherwise directed by a court or a judge.

Service of
order.

The order when made must be drawn up and served forthwith.

APPLICATIONS RELATING TO THE WRIT.

For Substituted Service.—Ex parte to the Master.

Ord. IX. r. 1.] No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance. Substituted service of writ.

Ord. IX. r. 2.] When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the court or to a judge that the plaintiff is from any cause unable to effect prompt personal service, the court or judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Ord. X.] Every application to the court or a judge, under Order IX., rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made. Affidavit in support.

This is similar to the practice under the C. L. P. Act, 1852, sect. 17, for leave to proceed as if personal service had been effected.

The affidavit to support this application was required to state—

1. That the writ had been properly issued and indorsed.
2. That reasonable efforts had been made to effect personal service, which reasonable efforts were set out and consisted in making three calls at the residence or place

of business of the defendant, and by leaving upon these occasions a copy of the writ, with instructions for the said copy to be given to defendant. By making appointments to call for the purpose of serving and then inquiring whether the copy had been given to defendant.

3. That in deponent's belief the writ had come to the knowledge of defendant, and that he was evading service, giving the reasons for the belief.
4. That deponent had searched and that no appearance had been entered by defendant.

A copy of the writ must be annexed to the affidavit, and sworn to be a true copy.

This application cannot be made until eight days after the last attempt to serve the defendant.

For cases see Day's C. L. P. Act.

The rules of this act scarcely require so much to be done ; for if it appears that prompt service cannot be effected, the master will make an order "that service of a copy of his order and a copy of the writ in the action, by leaving these documents at defendant's dwelling-house, copies being left at the same time at his place of business and addressed to him by prepaid post letter," shall be good and sufficient service of the writ; but the order will not always require this to be done.

An application for substituted service upon one of defendants who was in India, his solicitor refusing to accept service on the ground that he was not instructed. Order made for substituted service on defendant's managing clerk and upon his solicitor. Defendant to have six weeks to appear. (*Armitage v. Fitzwilliam*, Sol. Jour., 11 Dec. 1875.)

Order.

Wife, service
of writ on.

Ord. IX. r. 3.] When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the court or a judge may order that the wife shall be served with or without service on the husband.

Service on
infant.

Ord. IX. r. 4.] When an infant is a defendant to the action, service on his or her father

or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the court or judge otherwise orders, be deemed good service on the infant; provided that the court or judge may order that service made or to be made on the infant shall be deemed good service.

Ord. IX. r. 5.] When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the court or judge otherwise orders, be deemed good service on such defendant. Service on lunatic.

As to the mode of service on partners and other bodies and in particular actions, see *Ord. IX. rr. 6, 6a, 7, 8, 9, 10, 11, 12 and 13.*

To serve Writ out of the Jurisdiction.

Ex parte to the Judge.

Ord. II. r. 4.] No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a court or judge.

Leave may be given to issue a writ of summons against a foreign corporation, but service of notice of the writ only, and not of the writ itself, can be allowed. (*Westman v. Sniderfabrick*, 45 L. J. 327.)

Ord. XI. r. 1.] Service out of the jurisdiction of a writ of summons or notice of a Subject of causes of action for which

service out of
the jurisdiction
is allowed.

writ of summons may be allowed by the court or a judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will or thing affecting such land, stock or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

Ord. XI. r. 1a—(Rule 5, June, 1876).]

Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or

sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

Ord. XI. r. 2.] In probate actions service of a writ of summons or notice of a writ of summons may by leave of the court or judge be allowed out of the jurisdiction.

Ord. XI. r. 3.] Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

The affidavit, which should be entitled in the matter of the Judicature Acts as well as in the action (*Young v. Brassey*, 45 L. J., Ch. 142) on which this application is grounded, must set out—

1. That the cause of action arose within the jurisdiction.

The mere statement is not sufficient. A short statement of the cause of action must be given, for instance, on a contract (held by Lush, J.), that the affidavit must state where the contract was made:

Affidavit in support.

Affidavit stating that the cause of action arose within the jurisdiction, and that it was for money paid by plaintiff for defendant and interest thereon, and that the defendant was bound to indemnify the plaintiff: Held by Lush, J., on appeal from master, that the affidavit must be amended by stating that the money was paid in London (Law Times, Nov. 20th, 1875, p. 51).

2. The amount or value of the property in dispute or sought to be recovered.
3. In what place or county the defendant may be found.

This is to enable the judge to fix the number of days to be allowed for appearance. The number of days is entirely in his discretion, and will be fixed according to the circumstances:

If the defendant resides in Scotland or Ireland, generally ten days. In France, twelve.

4. If in Ireland or Scotland. Of the existence of a local court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of defendant's residence.
5. That the defendant is or is not a British subject.

If a British subject leave will be given to serve the writ:

If defendant be a foreigner he must be served with notice of the writ, as the Queen's writ does not extend to a foreigner; and leave to serve such notice will be given.

Ord. XI. r. 4.] Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

Order.

The form of the order is, "that a writ for service out of the jurisdiction may issue"—and further, that the time for ap-

pearance to the said writ shall be within days after the service of the writ (or notice of the writ).

The order may, to avoid the expense and delay of separate applications, also provide, when required, for the service of interrogatories and the issuing of an injunction. (*Young v. Brassey*, 45 L. J., Ch. 142.)

Ord. XI. r. 5.] Notice in lieu of service shall be given in the manner in which writs of summons are served.

Appendix A., Part I., Form 3, as amended by Order II. of June, 1876.]

NOTICE OF WRIT IN LIEU OF SERVICE TO BE GIVEN OUT OF THE JURISDICTION.

187 . [*Here put the letter and number.*]

Between A. B., plaintiff,
and

C. D., E. F. and G. H., defendants.

To G. H., of .

Take notice, that A. B., of has commenced an action against you, G. H., in the Division of Her Majesty's High Court of Justice in England, by writ of that court, dated the day of , A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the office at .

(Signed) A. B. of *&c.*

or
X. Y. of *&c.*

Solicitor for A. B.

Ord. VI. r. 2.] A writ for service within Concurrent writ for service the jurisdiction may be issued and marked as a

within juris-
diction.

concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Leave to serve Notice of Motion with Writ.

Master.

Ord. LIII. r. 8.] The plaintiff may, by leave of the court or a judge to be obtained ex parte, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

To amend Indorsement on the Writ.

Master.

Ord. II. r. 1.] Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the division of the High Court to which it is intended that the action should be assigned.

Ord. III. r. 1.] The indorsement of claim

shall be made on every writ of summons before it is issued.

Ord. III. r. 2.] In the indorsement required by Order II. rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the court or judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

By summons to show cause why the writ herein should Summons.
not be amended by (*the proposed amendment must be fully set out*).

In cases where the writ has not been served, it was held by Lush, J., that the application must still be made.

Ord. XXVII. r. 11.—Rule 6 of June, 1876.] The court or a judge may, at any stage of the proceedings, allow the plaintiff to amend the writ of summons in such manner, and on such terms, as may seem just.

Leave to renew the Writ.—Ex parte to the
Master.

Ord. VIII. r. 1.] No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the

expiration of the twelve months, apply to a judge or the district registrar, for leave to renew the writ; and the judge or registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5 in Appendix (A), Part I.; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Form 5, Appendix (A.), Part I.]

FORM OF MEMORANDUM FOR RENEWED WRIT.

In the High Court of Justice.

Division.

Between A. B., plaintiff,
and

C. D., defendant.

Seal renewed writ of summons in this action indorsed as follows:

[*Copy original writ and the indorsements.*]

Writs have hitherto been in force, unless renewed, for only six months, and were renewable upon the delivery of a præcipe to the proper officer; by this rule the writ remains in force for twelve months, and can only be renewed by leave, granted upon an affidavit setting out the efforts that have been made to serve it. Affidavit in support.

The rule applies only to writs issued under the act. An application for an order to renew a writ, issued in 1874 and duly renewed at intervals of six months: Mr. Justice Lush declined to make an order, stating that it was his impression that writs issued before the operation of the act will never require an order for their renewal. Under the 11th sect. of C. L. P. Act, 1852, it is settled that the six months during which the renewed writ continues in force are to be reckoned inclusive of the day of renewal. (*Anonymous*, 32 L. J., Ex. 88.)

The application for renewal must take place within the twelve months on the construction of the above section of the C. L. P. Act. The Queen's Bench holding that they had no jurisdiction to allow a renewal *nunc pro tunc* when the omission to renew in due time was not attributable to the officer of the court but to the attorney. (*Nazer v. Wade*, 31 L. J., Q. B. 5.) Time for application.

The Court of Queen's Bench (L. C. Justice, Blackburn, J., and Lush, J.) refused to allow a copy writ of summons to be stamped as a renewed writ. The original writ was issued on the 16th January, 1875; on 14th July it was renewed, since which it was lost or mislaid. (*Davies v. Garland*, 13 Jan. 1876.)

Ord. VI. r. 1.] The plaintiff in any action may at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by Concurrent writs.

the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

As to issuing a writ out of the jurisdiction concurrently with one for service within the jurisdiction see Order VI. r. 2, page 43.

To set aside the Writ.

Master.

When not issued by authority of the solicitor whose name is indorsed thereon.

Ord. VII. r. 1.] Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the court or a judge.

To appear and defend in Ejectment.

Ex parte to the Master.

As landlord.

Ord. XII. r. 18.] Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the court or

judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

On affidavit that applicant is in possession either as land- Affidavit.
lord or by his tenant.

Ord. XII. r. 19.] Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Ord. XII. r. 20.] Where a person not Person appear-
ing to be
named as a
defendant. named as defendant in any writ of summons for the recovery of land has obtained leave of the court or judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

*To appear and defend to Action on Bill of
Exchange.*

Ex parte to the Master.

Ord. II. r. 6.] With respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become due and payable, the pro-

cedure under the Bills of Exchange Act, 18 & 19 Vict. c. 67, shall continue to be used.

Defendant showing a defence on the merits to have leave to apply.

18 & 19 Vict. c. 67.] Section 2 of the above-mentioned act enacts "that a judge shall, upon application within the period of twelve days from such service, give leave to appear to such writ, and to defend the action, on the defendant paying into court the sum indorsed on the writ, or upon affidavits satisfactory to the judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the judge may seem fit.

Affidavit in support.

The affidavit in support must set out a legal or equitable defence, or a defence upon the merits.

A copy of the writ must be attached.

Time within which application is to be made.

Care must be taken that the application is made within the twelve days after service of the writ; but sect. 3 provides, "that even after judgment a judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action if it shall appear to be reasonable to the court or judge so to do, and on such terms as to the court or judge may seem just."

Leave on payment into court.

It is to be observed, that defendant, upon paying the amount indorsed upon the writ into court within the twelve days, is entitled to leave to appear as of right.

Notice to plaintiff of appearance.

The defendant, on obtaining leave to appear, should give notice thereof and of his appearance to the plaintiff. (*Oake v. Moorcroft*, L. R., 5 Q. B. 76, 78.)

A writ issued under the Bills of Exchange Act is subject to the rules of the Judicature Act, though first subject to the conditions of the Bills of Exchange Act. Therefore a writ under the Bills of Exchange Act may be issued from a district registry, and the defendant, although neither residing nor carrying on business within such district, must apply at such district registry for leave to appear. (*Oger v. Bradnum*, 45 L. J. 273.)

To set aside Appearance.

Master.

The memorandum of appearance must state the name and place of business of the defendant's solicitor, or if defendant appears in person it must contain his address, and if entered in London, a place which shall not be more than three miles from Temple Bar, to be called his address for service.

See Ord. XII. rr. 7, 8, p. 8.

Ord. XII. r. 9.] If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff.

By summons.

To sign Final Judgment where Writ specially indorsed. Master.

Ord. III. r. 6.] In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under a seal or not, where the claim against the principal is in

respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

Forms of
special indorse-
ments.

The following forms of special indorsement are given in Appendix (A.), Part II. sect. 7.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

1873—31st December.—

Balance of account for butcher's meat to	£	s.	d.
this date	35	10	0

1874—1st January to 31st March.—

Butcher's meat supplied	74	5	0
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	109	15	0
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1874—1st February.—Paid	45	0	0
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Balance due	64	15	0
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2. The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as surety, for the price of goods sold to A. B. The following are the particulars:—

1874—2nd February. Guarantee by C. D. of the price of woollen goods, to be supplied to A. B.

2nd February—To goods	£	s.	d.
	47	15	0

3rd March—To goods	105	14	0
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17th March—To goods	14	12	0
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5th April—To goods	34	0	0
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	202	1	0
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3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for 250*l.*, dated 1st January, 1874, made by defendant, payable four months after date.

Principal	£	250
Interest	..	..

4. The plaintiff's claim is against the defendant A. B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange. The following are the particulars:—

Bill of exchange for 500*l.*, dated 1st January, 1874, drawn by defendant C. D. upon and accepted by defendant A. B., payable three months after date.

						£
Principal	..	..	..	..	..	500
Interest ..	..	..	..	..	..	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 1873. Condition for payment of 100*l.* on the 26th December, 1873.

						£
Principal due	..	..	..	..	..	50
Interest ..	..	..	..	..	..	

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated covenant to pay 100*l.* and interest.

						£
Principal due	..	..	..	..	..	80
Interest ..	..	..	..	..	..	

Upon application to sign judgment, it appeared the writ was indorsed "The plaintiff's claim is 36*l.* 5*s.* for" balance of account for goods sold. The question was whether this was a sufficient indorsement. Mr. Justice Lush said, "It could not be intended that a list of items extending, perhaps, over three or four years could be indorsed on the writ. I think the plaintiff entitled to sign judgment."

Nothing in this rule interferes with proceedings under the Bills of Exchange Act, 18 & 19 Vict. c. 67 (Order II. r. 6.)

Where defendant fails to enter appearance—

Ord. XIII. r. 3.] In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., r. 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate

Final judgment in case of non-appearance.

May be set
aside.

specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as may seem just.

Ord. XIII. r. 4.] Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III. r. 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

Where defendant appears—

Application by
plaintiff to
sign judgment
when writ
specially in-
dorsed.

Ord. XIV. r. 1.] Where the defendant appears on a writ of summons specially indorsed, under Order III., r. 6, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the court or a judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the court or judge may, unless the defendant, by affidavit or otherwise, satisfy the court or judge that he has a good defence to the action on the merits, or disclose such facts as the court or judge may think sufficient to entitle him to be permitted to defend the action,

make an order empowering the plaintiff to sign judgment accordingly.

This rule does not apply to cases such as that of a guarantor, where, the amount of the plaintiff's claim not being in the knowledge of the defendant, he may reasonably call on the plaintiff to prove it. (*Lloyd's Banking Co. v. Ogle*, 45 L. J. 606.)

Ord. XIV. r. 2.] The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by summons returnable not less than two clear days after service.

Upon filing an affidavit verifying the cause of action, and that in plaintiff's belief there is no defence, with one of the judge's clerks, a summons is granted to show cause why the plaintiff should not be at liberty to sign final judgment in this action for the amount indorsed on the writ, with interest, if any, and costs.

Affidavit in support.

Summons.

The summons is made returnable in not less than two clear days.

A copy of the writ should be annexed to the affidavit.

On hearing before the master—

Ord. XIV. r. 3.] The defendant may show cause against such application by offering to bring into court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

Defendant may show cause.

The order will (if granted) be the affirmative of the summons, or,

Judgment may
be for part of
claim.

Ord. XIV. r. 4.] If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim; or that any part of his claim is admitted to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into court by the sheriff, the taxation of costs, or otherwise, as the judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

A mere affidavit that the defendant has a good defence is not sufficient ground for refusing to allow judgment to be signed under this rule. "That would," said Mr. Justice Quain, "be encouraging defendants to make illusory affidavits" (*Law Times*, Dec. 18, 1875, p. 123); but if the affidavit discloses a bona fide defence the summons will be dismissed. The master will not try the action.

Judgment may
be against one
defendant.

Ord. XIV. r. 5.] If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

Ord. XIV. r. 6.] Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the court or a judge may think fit. Leave may be given to defend on terms.

Where the defendant makes an affidavit that he has a good defence to the action on the merits, and shows also by such affidavit that there is some substantial defence, as where the amount claimed to be due for work done by the plaintiff is one which is fairly in dispute, the judge to whom the application is made ought in the exercise of his discretion to give the defendant leave to defend without requiring him to bring the amount into court. (*Runnacles v. Mesquitu*, 45 L. J. 407.)

An indorsement on the summons "no order" is equivalent to leave to defend. Although express leave ought to be given. (*Archibald, J., Margate Pier Co. v. Perry*, L. T., J. C. 253.) No order.

Ord. XXII. r. 3.] Where leave has been given to a defendant to defend under Order XIV., r. 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

To sign Judgment in Ejectment.

Master.

Ord. XIII. r. 7.] In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at Where no appearance.

liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Ord. XIII. r. 8.] Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this order as to such other claim so indorsed.

But where the service has been under—

Where writ
posted on
property.

Ord. IX. r. 8.] Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

An order will be necessary, granted by the master upon an affidavit setting out the mode of service.

Rule 112 of Reg. Gen., Hilary, 1873, which is still in force, orders that “no judgment in ejectment shall be signed where personal service has not been effected without first obtaining a judge’s order authorizing the signing such judgment.”

To set aside Judgment.

Master.

Ord. XXIX. r. 14.] Any judgment by default, whether under this order or under any

other of these rules, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit.

Ord. XXIX. refers to default in pleading.

And where writ specially indorsed under Ord. III. r. 6, se Ord. XIII. r. 3, p. 53.

*Appointment of Next Friend and of Guardian
ad litem.* Master.

Ord. XVI. r. 8.] Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the court or a judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the court or a judge may require.

The practice of the Court of Chancery has been to permit Next friend. any fit and proper person to institute a suit as the next friend of an infant, without any appointment by the court, so that before his name is so used he signs a written authority to the solicitor for that purpose.

The nearest relation is supposed to be the person who will take the infant under his protection and assert his rights, and it is for this reason that the person who institutes a suit on behalf of an infant is termed his next friend.

See Ord. XVI. r. 13, p. 62.

A defendant has the same rights against a next friend as against any ordinary plaintiff as to security for costs, &c.

Guardian.
Affidavit in
support.

Where an infant is defendant it is necessary to apply for the appointment of a guardian ad litem. Granted upon petition in the name of the infant, supported by an affidavit of the infant's solicitor, that the proposed guardian has no interest in the matters in question in the suit adverse to that of the infant, and secondly, that he is a fit and proper person to be appointed. This latter affirmation may be made by a person other than the solicitor.

Death of guar-
dian.

In the event of the death of the guardian a new one can be appointed in the same manner, but the judge will require to be satisfied of his willingness to act.

A co-defendant may be appointed if he has no adverse interest, but the court will not allow the plaintiff, nor a married woman, nor a person out of the jurisdiction, to be so appointed.

Persons of
unsound mind.

Ord. XVIII.] In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said act, and may in like manner defend any action by their committees or guardians appointed for the purpose.

With regard to persons of unsound mind the next friend or guardian is appointed upon petition in the name of the lunatic, supported by affidavits proving the mental incapacity, the fitness of proposed guardian, and that he has no adverse interest.

Where no
guardian ap-
pointed.

If no guardian appointed, plaintiff may, in default of appearance, apply that a solicitor may be appointed.

The application must be supported by an affidavit that the

writ was duly served (see Ord. IX. r. 4), and that notice of such application was, after the expiration of the time, allowed for appearance, and at least six clear days before the day in such notice named for hearing the application served in the same manner as the writ.

Ord. XIII. r. 1.] Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff may apply to the court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the court or judge at the time of hearing such application shall dispense with such last-mentioned service.

In default of plaintiff's appearance, to apply to appoint guardian.

Next friend
of married
woman.

The next friend of a married woman must be a person of substance, as he is liable for costs, or he will be required to give security; but it is to be observed, that married women can sue and defend without a next friend, upon giving security, if so required.

To add or strike out or substitute Parties.

Master.

Ord. XVI. r. 14.] Any application to add or strike out or substitute a plaintiff or defendant may be made to the court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Summons.

Application by summons at any time by either party; or during the proceedings if it appear to the court or judge, without the application of either party, parties may be added.

Power to
strike out
parties.

Ord. XVI. r. 13.] No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out,

and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Ord. XVI. rr. 1 & 3.] All persons may be joined as plaintiffs in whom (and by r. 3 as defendants against whom) the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the court in disposing of the costs of the action shall otherwise direct.

Who may be joined as plaintiff or defendant.

Substitution of
plaintiff.

Ord. XVI. r. 2.] Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the court or a judge may, if satisfied that it has been so commenced through a bonâ fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

This is entirely a new power, and the application must be supported by satisfying the judge of two things—that there has been a bonâ fide mistake, and that it is a necessary change that is sought. Where in an action for the balance due on a promissory note, it appeared that the note had been drawn in favour of one Hart, that he on leaving England had put the note into the hands of the Mercantile River Plate Bank without indorsing it. Upon being informed of the fact, he forwarded to the bank an indorsed copy. In consequence of this informality in the note sued upon, it was desired to substitute Hart as plaintiff. Denman, J., made the order. (*Mercantile River Plate Bank v. Isaac*, L. T., J. C. 304.)

No plaintiff can be added without his consent. (Rule 13, p. 62.)

Addition of
defendant.

To add a defendant the addition must be necessary in order to adjudicate in the question in the action between the present plaintiff and defendant.

In an action for libel which had been brought against the publisher of a newspaper, it appearing after issue closed, in answer to interrogatories, that one A. B. was the sole proprietor of the newspaper, the court, in the exercise of its discretion, made an order, on the application of plaintiff, that A. B. should be added as defendant, the court imposing the

terms that when joined as defendant he should have the same rights as he would have had if the action was only then commenced. (*Edwards v. Lowther*, 45 L. J. 417.)

An action by a merchant against solicitors for negligence. Defence that the negligence, if any, was one Kilby's, whom the defendants had instructed. Upon an application to join Kilby as defendant, held by Lindley, J., not to be within the rule. (*Lerearley v. Harrison*, L. T., J. C. 242.)

An action for mesne profits against defendant, against whom an action of ejectment had been successfully maintained. Damages assessed at the rent defendant had been paying. Defendant's case was that he had paid rent to Miss Lovell, plaintiff's sister, and that she had applied the money to defray the expenses of plaintiff's residence in an asylum. Upon defendant's application to make Miss Lovell a defendant, Master Hodgson made "no order." Confirmed on appeal by Archibald, J., stating that if the defendant was led to believe that Miss Lovell was the person to whom the rent should be paid, and paid under a mistake of fact, he has a simple remedy against her for money had and received. (*Lovell v. Holland*, L. T., J. C. 256.)

Ord. XVI. r. 4.] It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

Not necessary that defendant interested in all the relief sought.

Ord. XVI. r. 5.] The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including

Option of plaintiff to join all or any severally liable.

parties to bills of exchange and promissory notes.

Ord. XVI. r. 6.] Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Trustees, &c.
may sue and
be sued.

Ord. XVI. r. 7.] Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the court or a judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Husband, per-
sonal repre-
sentative,
trustee, &c.
may be joined.

Ord. L. r. 2.] In case of the marriage, death or bankruptcy, or devolution of estate by operation of law, of any party to an action, the court or a judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee or

other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the court or judge shall think just, and shall make such order for the disposal of the action as may be just.

Change of Parties by Death, &c.

Master.

Ex parte upon an affidavit of such change or transmission of interest or liability, and order that the proceedings in the action shall be carried on between the continuing parties to the action. Affidavit of fact.

Ord. L. r. 4.] Where by reason of marriage, death or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the court or a judge, upon an allegation of such change, or transmission of interest

or liability, or of such person interested having come into existence.

Service of
order.

Ord. L. r. 5.] An order so obtained shall, unless the court or judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

To vary or
discharge
order.

An application to vary or discharge the order made under these rules must be made within twelve days.

Ord. L. r. 6.] Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action, shall be served with such order, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the service thereof.

Ord. L. r. 7.] Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action, is served with any such order,

such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians ad litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

*For leave to give Notice of Contribution or
Indemnity.* Master.

36 & 37 Vict. s. 24, sub-sect. 3.] The said courts (High Court of Justice and Court of Appeal) respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause

or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court or any order of the court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

Ord. XVI. r. 17.] Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the court or a judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the court or a judge may on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

Affidavit.

Ex parte by defendant upon affidavit of the cause of action and the remedy or relief sought. The order may be granted at once, or the parties ordered to attend.

Ord. XVI. r. 18.] Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against

any person not a party to the action, he may, by leave of the court or a judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix (B.) hereto with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

The power for a defendant to give a third person notice under this rule, so as to have relief against such third person, is limited to cases in which the claim of the defendant against such third person is identical with that of the plaintiff against the defendant (*Swansea Shipping Co. v. Duncan, &c.*, 45 L. J. 423); but upon appeal, held that if there is a substantial question which may be determined in the action, not only between the plaintiff and defendant, but also between defendant and a third party, then that question ought not to be tried twice. (45 L. J. 638.)

Upon a motion to rescind an order of Lindley, J., affirming an order of the Master to bring in Messrs. Leyland & Co. as third parties, against whom the defendants claimed an indemnity in the action. The action was for negligence in effecting certain policies of marine insurance, whereby the plaintiff

was unable to recover upon them. The defendants served notice under Rule 18 upon Messrs. Leyland, that they claimed to be indemnified by them as having been their agents in effecting certain of the policies; and that if they wished to dispute the plaintiff's claim they must come in and defend; upon which the orders complained of were made: the Divisional Court rescinded the order on the ground that the damages sued for by the plaintiff were not the same as the damages which the defendants would be entitled to recover against Messrs. Leyland, and that the defendants could not split up the cause of action into several parts and single out one or two to make a third party liable for in the same proceedings. (*Brown v. Hartley and another*, Law Journal Notes, July 8th, 1876.)

In an action against auctioneers by an intending vendee for his deposit money. Notice had been served upon Green, the vendor, who claimed the deposit money as forfeit. Out of the deposit defendant claimed commission. Lush, J., directed that the vendor, Green, should come in as a party to be bound by the verdict, and observed that this is one of the very cases contemplated by the act. (*Tebbs v. Lewis and another*, L. T., J. C. 48.)

An action by builders for work done under a contract. Defendants desired to claim indemnity from the architect, who had ordered extras without authority. The question to be tried was whether these extras were a reasonable outcome of the contract. Order to serve notice on architect. (*Daves and another v. Thornton and others*, L. T., J. C. 297.)

An action for the price of ironwork. Smaley had contracted to build a warehouse; defendants to find the ironwork and receive from Smaley 80 per cent. Defendants admitted their liability, and the question was whether Smaley should indemnify them to the extent of 80 per cent., or to the full amount. Lush, J., ordered Smaley, if found to be liable, to be bound by the amount due from defendant. The object of the rule is to estop a third party from disputing the amount, that at the trial the defendant should be held liable to pay the plaintiff. (*Measures v. Thomas*, L. T., J. C. 43.)

The following is the form of notice to be given, with such alterations as are necessary:—

Form of
notice.

Appendix (B.), Form 1.]

NOTICE BY DEFENDANT TO THIRD PARTY.

187 . [*Here put the letter and number.*]

Notice filed , 187 .

In the High Court.

Queen's Bench Division.

Between A. B., plaintiff,

and

C. D., defendant.

To Mr. X. Y.

Take notice that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of 2,000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond, *or*, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.]].

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you before and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., you must cause an appearance to be entered for you within eight days after service of this notice.

C.P.

E

In default of your so appearing, you will not be entitled in any future proceeding between the defendant C. D. and yourself to dispute the validity of the judgment in this action, whether obtained by consent or otherwise.

(Signed) E. T.

Or,

X. Y.,

Solicitor for the defendant,

E. T.

Appearance to be entered at . . .

Notice to be
given to
plaintiff.

Ord. XVI. r. 19.] When under r. 17 (p. 70) of this Order it is made to appear to the court or a judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the court or a judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the judge may postpone such trial as he may think fit.

Party served
to enter an
appearance.

Ord. XVI. r. 20.] If a person not a party to the action, who is served as mentioned in r. 18 (p. 70), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or

otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the court or a judge shall think fit.

Ord. XVI. r. 21.] If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the court or a judge for directions as to the mode of having the question in the action determined; and the court or judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the court or a judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

To separate several Causes of Action joined.

Master.

The following causes of action shall not be joined without leave:—

Ord. XVII. r. 2.] No cause of action Causes of action that may

not be joined
without leave.

shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

Ord. XVII. r. 3.] Claims by a trustee in bankruptcy as such shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity.

Ord. XVII. r. 4.] Claims by or against husband and wife may be joined with claims by or against either of them separately.

Ord. XVII. r. 5.] Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Summons.

But where several causes of action have been joined in one, and it is embarrassing or inconvenient to try them together, the defendant can take out a summons to show cause why the several causes of action herein should not be tried separately.

Ord. XVII. r. 8.] Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the court or a judge for an order confining the action to such of the causes of

action as may be conveniently disposed of in one proceeding.

Ord. XVII. r. 9.] If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of in one action, the court or a judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

Several issues of fact may be ordered to be tried separately, and by a different mode of trial.

Ord. XXXVI. r. 6.] Subject to the provisions of the preceding rules (as to mode of trial, see rr. 1, 2, 3, 4, 5, of this Order), the court or a judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

Several issues of fact may be tried separately.

An order will not be made if plaintiff is prejudiced by the issues being tried separately. (*Millisich v. Lloyd*, L. T., J. C. 12.)

An action for injuries done to plaintiffs' vessel while in the dock of defendants, who denied their liability. Lush, J., ordered the question of liability to be tried separately from that of damages. (*Liverpool, Brazil, &c. Co. v. London and St. Katherine's Steam Navigation Co.*, L. T., J. C. 42.)

Ord. XXXVI. r. 26.] The court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the act could, without any consent of parties, be tried without a jury.

Ord. XXXVI. r. 27.] The court or a judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

To strike out Counter-claim.

Master.

Summons.

Plaintiff may apply by summons to have counter-claim struck out if it cannot be conveniently disposed of in the action. The summons must be supported by showing the nature of the claim, and the defendant must support his opposition by affidavit showing that he has a *bonâ fide* ground for a cross action.

Ord. XIX. r. 3.] A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or

counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

The application must be before reply.

Time for application.

Ord. XXII. r. 9.] Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the court or a judge for an order that such counter-claim may be excluded, and the court or a judge may, on the hearing of such application, make such order as shall be just.

There is no doubt that a defendant is entitled to set up any counter-claim that is not so incongruous as to be incapable of being conveniently tried with the original claim. In an action for goods sold and delivered, defence, fraud as to the nature of the goods. Defendant had retained the goods and there had been part payment. Lush, J., upon application of defendant, ordered the counter-claim to be allowed after issue joined, observing that fraudulent representation as to the nature of goods was ground for an action,

but if you keep the goods it is no defence to an action for their value. (*Evans v. Gan*, L. T., J. C. 19.)

An action by executors against defendants, bankers of deceased, for money due. Huddleston, B., allowed counter-claim for payment of an overdue joint and several promissory note signed by deceased. (*Wavell v. National and Provincial Bank of England*, L. T., J. C. 166.)

An action for rent. Set off the price of butchers' meat delivered, and a counter-claim for damages as tenants from year to year of the plaintiff, and for specific performance of an agreement to grant a lease. Lindley, J., affirming the decision of the Master, who had refused to strike out the counter-claim, observed, I cannot hold that this counter-claim is sufficiently embarrassing to be struck out; and I think if I were to do so, I should be acting against the spirit of the act. (*Atwood v. Miller*, L. T., J. C. 194.)

An action on a bill of exchange. Statement of defence alleged that the bill had never been indorsed by Alexander, the drawee, to the plaintiff; or if it had been so indorsed, that there had been no consideration for such indorsement, and that it was held by plaintiff solely as trustee for Alexander. The set-off and counter-claim alleged that Alexander and the defendant were jointly engaged to act for a company, and that they agreed that the commission which they should receive for their services was to be equally divided between them, and that Alexander fraudulently refused to account for commission he had received. Lindley, J., allowed this set-off and counter-claim. (*Macdonald v. Bode*, L. T., J. C. 224.)

But in an action for assault and slander, with the statement of defence, a counter-claim had been delivered for breach of an agreement to repair. Quain, J., on appeal ordered the counter-claim to be struck out, because the matters therein alleged were not in any way connected with plaintiff's cause of action. (*Lee v. Colyer*, L. T., J. C. 175.)

And in an action for libel contained in a circular letter, published by defendant among the shareholders of a company. Plaintiff a director, charged in the letter with conspiracy and fraud. Lindley, J., struck out a counter-claim for damages for loss sustained in respect of shares bought on

false representations, observing that it was one of those cases where it would be very difficult to keep the jury from mixing up the two claims. (*Nicholson v. Jackson*, L. T., J. C. 234.)

Ord. XIX. r. 10.] Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

Leave to Plead.

Master.

It is necessary to obtain leave to plead in the following cases:—

Ord. XXIV. r. 2.] No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the court or a judge, and then upon such terms as the court or judge shall think fit. Subsequent to reply.

By summons to be at liberty to add (a further statement of counter-claim or defence) to the pleadings. It is to be observed that pleadings cannot go beyond the reply without leave.

Ord. XXIV. r. 3.] Subject to the last preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the court or a judge. To be delivered within four days.

Ord. XX. r. 2.] Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited Further statement after reply.

for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same.

To plead other defence with not guilty by statute.

Ord. XIX. r. 16.] Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the court or a judge.

After a pleading has been amended it is necessary to obtain leave to plead in answer (see *Ord. XXVII. r. 5*, p. 86).

To plead and demur to demurrer.

Ord. XXVIII. r. 5.] If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the court or a judge for an order giving him leave to do so; and the court or judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

By summons to be at liberty to plead and demur to the Summons. demurrer herein. Supported by showing there is a reasonable ground of demurrer.

The ground of demurrer that the statement of claim disclosed no cause of action. Lindley, J., gave leave to plead and demur thereto. (L. T., J. C., 231.)

To Amend Pleadings.

Master.

Ord. XXVII. r. 6.] In all cases not provided for by the preceding rules (2 and 3, *post*) of this order, application for leave to amend any pleading may be made by either party to the court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

By summons to show cause why the [plaintiff or defendant] Summons. should not be at liberty to amend the pleadings herein by, &c., or why the pleadings herein should not be amended by adding or striking out [here describe the amendment proposed or required].

The order for leave, which must state the time within which it is to be made, is generally allowed on payment of costs, but no amendment shall be made while a demurrer is pending.

Ord. XXVIII. r. 7.] While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the court or a judge; and no such order shall be made except on payment of the costs of the demurrer. No amendment allowed while demurrer pending.

Without leave. *Ord. XXVII. r. 2.*] The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

Ord. XXVII. r. 3.] A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

It is not necessary that the subject-matter of a counter-claim existed before the action. It may be pleaded if it arises in the course of the pleadings.

Amendment
may be made
at any stage of
the proceedings.

Ord. XXVII. r. 1.] The court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

The grounds upon which a plaintiff's claim is based should Of statement
concisely appear in his statement of claim, and without at of claim.
all going into the evidence.

Striking out pleadings as embarrassing is a matter of discretion in the judge, and as a general rule no appeal from his order will be entertained. (*Goldring v. Wharton Salt-works Co.*, L. R., June, 1876, Q. B. 374.)

An action for work done in building a reservoir. The Master ordered twenty-two paragraphs of the statement of claim to be struck out on the ground of prolixity. It appeared that the action was brought on two contracts, which were set out, and various allegations assigned not as breaches, but put in simply to prejudice. Huddleston, B., affirmed the Master's decision, as the first principle of pleading under the act is to avoid prolixity. (*Marsh v. Mayor, &c. of Pontefract*, L. T., J. C. 167.)

And Lindley, J., in an action for unlawful distress, ordered the statement of claim to be amended, not only on the ground of prolixity, but of obscurity. Costs to be defendant's. (*Moorhouse v. Colville*, L. T., J. C. 201.)

It must not be embarrassing, the grievance must be stated clearly. (*Jones v. Turner*, L. T., J. C. 128.)

Admissions by the defendant, inserted in a paragraph of statement of claim, were ordered by Quain, J., to be struck out. (*Askew v. North Eastern Rail. Co.*, L. T., J. C. 121.)

In an action for trespass, plaintiff, under order for particulars, delivered a copy of the indorsement on the writ as a statement of claim. Lindley, J., held this not to be sufficient, and ordered it to be amended. (L. T., J. C. 228.)

Where in an action on a voluntary bond the defence set Of statement
up was one of fraud, and contained eight paragraphs of of defence or
matter as to the course of living led by the parties, Archi- counter-claim.
bald, J., ordered them to be struck out, being "scandalous," and not fit to appear on the pleadings. (*Duncan v. Vereker*, L. T., J. C. 289.)

It will also be struck out if embarrassing. (*Restall v. Steward*, L. T., J. C. 147.)

A plea to an action on a contract that the plaintiff was suing on his own behalf, whereas he made the contract as agent for a company, will not be struck out as embarrassing,

(*Goldring v. Wharton Saltworks Co.*, L. R., June, 1876, Q. B. 574.)

Mr. Justice Lush, in an action, *Crowther v. Du Gillon*, tried at the Leeds Summer Assizes, 1876, disallowed the prayer for an injunction in a statement of counter-claim.

Ord. XXVII. r. 4.] Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court, or a judge, to disallow the amendment, or any part thereof, and the court or judge may, if satisfied that the justice of the case requires it, disallow the same or allow it subject to such terms as to costs or otherwise as may seem just.

To plead after amendment.

Ord. XXVII. r. 5.] Where any party has amended his pleading under rule 2 or 3 of this Order, the other party may apply to the court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

It is to be observed it cannot be done but by summons stating the amendment sought.

Amendment to be made within time limited by order.

Ord. XXVII. r. 7.] If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of

such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge.

Ord. XXVII. r. 9.] Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.:
 “Amended day of .”

Amendment to be marked with date.

To set aside Demurrer.

Master.

Ord. XXVIII. r. 2.] A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C.) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the court or judge may set aside such demurrer, with costs.

Demurrer must state some ground in law.

By summons. Formerly it was sufficient to state that the pleading was “bad in substance,” and to state in the margin the ground why. Now, however, the demurrer must set out some ground in law, which, if frivolous, will be set aside.

The following is the form of demurrer provided by the statute :—

Appendix (C.), Form 28.]

FORM OF DEMURRER.

In the High Court of Justice,
Division.

A. B. v. C. D.

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint *or* defendant's statement of defence, *or* of set-off, *or* of counter-claim], [*or* to so much of the plaintiff's statement of complaint as claims . . . *or* as alleges as a breach of contract the matters mentioned in paragraph 17, *or as the case may be*], and says that the same is bad in law on the ground that [*here state a ground of demurrer*] and on other grounds, sufficient in law to sustain this demurrer.

As to amending pleadings demurred to, see Order XXVIII. r. 7, p. 83.

To settle Issues.

Judge.

Ord. XXVI.] Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

By summons at the instance of either party to show cause why the issues should not be settled by the judge at chambers.

This summons may be taken before the Master by consent.

To pay Money into Court in Satisfaction.

Master.

Leave is only necessary after delivery of defence.

By summons to be at liberty to pay money into court in Summons.
satisfaction of plaintiff's claim.

Ord. XXX. r. 1.] Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the court or a judge at any later time, pay into court a sum of money by way of satisfaction or amends. Payment into court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

Payment into court in satisfaction.

“As money may now be paid into court without leave at any time after service of the writ and before defence (*Ord. XXX. r. 1*), summonses to stay on payment of a smaller sum will no longer be issued. Instead thereof, the amount should be paid into court and the receipt sent to the plaintiff's solicitor, with the notice (*Appendix B.*), *Form 5*. By order of the sitting judge [*Lush, J.*], Chambers, November 12th, 1875.”

Ord. XXX. r. 2.] Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence, the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the *Form No. 5* in *Appendix (B.)* hereto.

To whom paid.

Appendix (B.), Form 5.]

Notice of
payment into
court.

NOTICE OF PAYMENT INTO COURT.

In the High Court of Justice.
Q. B. Division.

1875. B. No.

A. B. v. C. D.

Take notice that the defendant has paid into court £ ,
and says that that sum is enough to satisfy the plaintiff's
claim [*or the plaintiff's claim for, &c.*].

To Mr. X. Y.,

the Plaintiff's Solicitor.

Z.,

Defendant's Solicitor.

To dismiss Action for want of Prosecution.

Master.

Non-delivery
of statement of
claim.

Ord. XXIX. r. 1.] If the plaintiff, being
bound to deliver a statement of claim, does not
deliver the same within the time allowed for
that purpose, the defendant may, at the expira-
tion of that time, apply to the court or a judge
to dismiss the action with costs, for want of
prosecution; and on the hearing of such appli-
cation the court or judge may, if no statement
of claim have been delivered, order the action
to be dismissed accordingly, or may make such
other order on such terms as to the court or
judge shall seem just.

Summons.

Summons to show cause why this action should not be
dismissed for want of prosecution.

Ord. XXXVI. r. 4.] Subject to the pro-
visions of the following rules, if the plaintiff
does not within six weeks after the close of the
pleadings, or within such extended time as a
court or judge may allow, give notice of trial,

the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in rule 2; and in such case the plaintiff, on giving notice within the time fixed by rule 3 that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried.

The rules referred to relate to the notice of the mode of trial.

Ord. XXXVI. r. 4a, Rule 13 of June, 1876.] The defendant, instead of giving notice of trial, may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge may seem just.

Non-delivery
of notice of
trial.

The action may also be liable to be dismissed if plaintiff fails to answer interrogatories. See *Ord. XXXI. r. 20*, p. 96.

To deliver Interrogatories.

Judge (Master by consent).

Ord. XXXI. r. 1.] The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any

Time for
delivering in-
terrogatories.

subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the court or a judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

A summons to deliver interrogatories, therefore, is only necessary before delivery of statement of claim or defence; or after the close of the pleadings; or for the purpose of delivering further interrogatories.

Affidavit, by whom made.

Where it is sought to administer interrogatories after the pleadings are at end, the practice under the old system continues, and an affidavit of the party proposing to interrogate and of his solicitor or agent (or if from unavoidable circumstances the plaintiff or defendant cannot join in the affidavit, upon an affidavit showing why, it may be dispensed with, C. L. P. Act, 1854, s. 52, or where a party sues in person the affidavit of the solicitor will be dispensed with, *Owladé v. North Eastern Rail. Co.*, 12 C. B., N. S. 350), stating that deponents believe—

Affidavit in support.

That the party proposing to interrogate will derive material benefit in the cause from the discovery which he seeks:

That there is a good cause of action or defence upon the merits.

And, if made by the defendant,—

That the discovery is not sought for the purpose of delay.

Upon the hearing of the summons the nature of the interrogatories will be gone into.

Interrogatories allowed before statement of defence in special cases.

In special cases interrogatories may be allowed to be delivered by defendant before his statement of defence.

Such leave was refused in an action for breach of trust

against the executors of the legal personal representative of a deceased trustee, who alleged that they were unable to prepare a defence in consequence of ignorance of the transactions. (*Disney v. Longbourne*, 45 L. J., Ch. 532.)

In an action on a bill of exchange (defence, failure of consideration), defendant desired to obtain information whether the failure of consideration would be a defence, by interrogatories. Archibald, J., allowed them to be delivered, observing that it might save expense, for if the plaintiff is a holder for value without notice, no statement of defence will be put in. (*Hawley v. Reade*, L. T., J. C. 290.)

To interrogate a body corporate an order is necessary at any stage, and will not be granted as of course. A summons for leave must be issued.

To interrogate a body corporate or joint stock company

Ord. XXXI. r. 4.] If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Interrogatories delivered to a joint stock company without an order, were, by Archibald, J., ordered to be struck out. (*Carter v. Leeds Daily News Co. and Jackson*, L. T., J. C., 199.)

Ord. XXXI. r. 3.] Interrogatories may be in the Form No. 7 in Appendix (B.) hereto, with such variations as circumstances may require. Form of interrogatories.

Appendix (B.), Form 7.]

FORM OF INTERROGATORIES.

In the High Court of Justice.

1874. B. No..

Division.

Between A. B., plaintiff,

and

C. D., E. F. and G. H., defendants.

Interrogatories on behalf of the above-named [*plaintiff*,
or *defendant C. D.*] for the examination of the above-
named [*defendants E. F. and G. H.*, or *plaintiff.*]

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[*The defendant E. F. is required to answer the
interrogatories numbered .*]

[*The defendant G. H. is required to answer the
interrogatories numbered .*]

Costs.

Ord. XXXI. r. 2.] The court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the court or judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

See Special Allowances, R. 18, of Aug. 12th, 1875, p. 33.
The costs are generally costs in the cause.

Ord. XXXI. r. 6.] Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a judge may allow.

The practice was entirely the same under the C. L. P. Act.

Ord. XXXI. r. 7 (as amended by r. 11 of June, 1876).] An affidavit in answer to interrogatories shall, unless otherwise ordered by a judge, if exceeding ten folios, be printed and may be in the Form No. 8 in Appendix (B.) hereto, with such variations as circumstances may require.

Form of
affidavit in
answer.

Appendix (B.), Form 8.]

FORM OF ANSWER TO INTERROGATORIES.

In the High Court of Justice.

1874. B. No.

Division.

Between A. B., plaintiff,
and

C. D., E. F. and G. H., defendants.

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

.....

The rule originally required the affidavit to be printed if it exceeded three folios.

Ord. XXXI. r. 8.] Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit.

Objections to
answer for
special reasons
how taken.

This rule is perfectly distinct in its intention from rule 5 (p. 97, to strike out interrogatories), and is intended where the objection to answer the interrogatory is not that it is bad in itself, but that there are special reasons for objecting, which must be set out in the affidavit.

Ord. XXXI. r. 9.] No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court or a judge on motion or summons.

Sufficiency of
affidavit to be
determined by
judge.

Omission to, or
insufficient
answer.

Ord. XXXI. r. 10.] If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or by *vivâ voce* examination as the judge may direct.

Summons.

Under these rules a summons is issued to show cause why A. B. should not file a further affidavit in answer to interrogatories delivered herein. The judge may order a further answer, or that the party interrogated be examined *vivâ voce*.

Non-com-
pliance with
order.

Action
dismissed or
defence struck
out.

Ord. XXXI. r. 20.] If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the court or a judge for an order to that effect, and an order may be made accordingly.

This is a highly penal provision and only to be exercised in the last resort, and will not be granted when the parties really intend to answer. (Lush, J., L. T., J. C. 32.)

Upon an application to dismiss an action for want of prosecution, plaintiff and his wife having been ordered to answer interrogatories, the latter only answered:—Held, that

it was not imperative upon the court to dismiss the action in such a state of circumstances. (*Hartley v. Owen*, Ch. Weekly Notes, June 10th, 1876, 193.)

To strike out Interrogatories.

Judge (Master by consent).

Resorted to where the interrogatories objected to are bad in substance.

Ord. XXXI. r. 5.] Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put *bonâ fide* for the purposes of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.

Objections to answer interrogatories when bad in substance.

Summons to show cause why the first, second and third interrogatories delivered herein should not be struck out. Summons.

This is entirely new; previously, upon the hearing of the summons for leave to deliver interrogatories under the 51st section of the C. L. P. Act, 1854, the merits of each interrogatory were discussed. Now that the parties deliver them as of right, and as abuse of that right is likely to arise, this rule provides a remedy, giving a judge power to strike out such as are—

When not allowed.

1. Scandalous;
2. Irrelevant.

In an action for breach of promise to marry, Quain, J., allowed interrogatories as to means of defendant, and as to

settlement made on defendant's present wife. (L. T., J. C. 133.) But to prove mere expectations of means by defendant, as to the means of his relations and as to any settlement made by them on his present wife, Lindley, J., ordered them to be struck out. (L. T., J. C. 213.) They must have, said the same learned judge, some connection with the pleadings. (L. T., J. C. 241.) But the mere fact that they are open to criticism is not a reason for striking them out. (*Winters v. Dabbs*, L. T., J. C. 207.)

3. Are not put *bonâ fide* for the purposes of the action.

They will not be allowed for the purpose of shaking opponent's character. (*Baker v. Newton*, L. T., J. C. 173.)

4. That the matter inquired after is not sufficiently material at that stage of the action ; or,

5. On any other ground.

The general interrogatory as to documents is not usually allowed. (*Pitten v. Chatterburg*, L. T., J. C. 141; *Bannicot and another v. Harris*, L. T., J. C. 188.)

To discover Documents.

Judge (Master by consent).

Ord. XXXI. r. 11.] It shall be lawful for the court or a judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the court or judge shall think right ; and the court may deal with such documents, when produced, in such manner as shall appear just.

Ord. XXXI. r. 12.] Any party may, without filing any affidavit, apply to a judge for an order directing any other party to the

action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

By summons issued at plaintiff's instance after delivery of statement of claim, and at defendant's after statement of defence; except under special circumstances. The reason why the plaintiff should not issue a summons before is obvious. A writ might be served and then an application under this rule to fish out a case. Summons.

This rule goes far beyond that under the C. L. P. Act, as it not only dispenses with an affidavit, but requires the opposite party, if he has not got the documents, to state what he has done with them.

An application by plaintiff for discovery. Defendant's affidavit stated that he had no documents in his power, possession or control. It appeared that defendant was a bankrupt, and that all his books and papers had been handed over to the trustee. Lindley, J., decided that the defendant must state what documents passed from him to the trustee, and the fact of their so passing. (L. T., J. C. 235.)

The order is granted, as a matter of course, upon very slight grounds, unless an objection is sustained, the onus resting on the party summoned. (Lindley, J., L. T., J. C. 227.) But it must appear that there are documents to be produced. An order will not be made upon mere application; it must appear that there are documents to be produced.

The power to refuse an order for the production of a document is limited to documents which fall within some known rule of protection or privilege, such as that of professional privilege. (*Bustros and others v. White*, 45 L. J. 642.) Where the parties by consent submit the documents themselves to the judge at chambers, the decision at which the judge arrives on such inspection will be final. (Ibid.)

Ord. XXXI. r. 13.] The affidavit to be made by a party against whom such order as Affidavit as to documents.

is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it may be in the Form No. 9 in Appendix (B.) hereto, with such variations as circumstances may require.

By this affidavit the party can protect himself with regard to any documents for which he claims privilege.

Correspondence between the solicitor of one of the parties to an action and a third person for the purpose of ascertaining facts, with a view to the action which was afterwards brought and was then anticipated, and for the purpose of guiding the party as to the mode of carrying it on, is privileged from inspection. (*M'Corquoidale v. Bell*, 45 L. J., C. P. 329.) But a letter written by plaintiff's agent to plaintiff containing the agent's opinion on the subject-matter, he having no personal knowledge of the facts beyond that possessed by the defendant, held not privileged.

The statutory form of affidavit is the right one, and is intended to be the common form. "An affidavit of documents," says Mr. Justice Lindley, "is intended now to be exhaustive" (L. T., J. C. 246), and includes documents that have been in the power of the opposite party. The form given in the act is so.

Appendix (B.), Form 9.]

Form of
affidavit of
documents

FORM OF AFFIDAVIT AS TO DOCUMENTS.

In the High Court of Justice.

1874. B. No.

Division.

Between A. B., plaintiff,

and

C. D., defendant.

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

To inspect Documents.

Judge.

The summons is only necessary.

Ord. XXXI. r. 17.] If the party served with notice under rule 15 (*post*, p. 103) omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a judge for an order for inspection.

Summons to inspect.

The summons asks for liberty to inspect and take copies of or extracts from, &c.

Upon the hearing it must be supported by an affidavit showing—

Affidavit in support.

1. Of what documents inspection is sought. Documents

referred to in the pleadings, or affidavits of the party against whom the application is made, are excepted.

2. That party applying is entitled to inspect.

3. That the documents are in possession or power of the other party.

Ord. XXXI. r. 18.] Every application for an order for inspection of documents shall be to a judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

Order.

The order is the affirmative of the summons, and generally that the inspection take place at the office of the opposite solicitor, upon payment of 6s. 8d. costs and 4d. per folio for extracts.

Or the judge may reserve the question of discovery or inspection till after the determination of the issue or question to be determined.

Question in dispute may be first tried.

Ord. XXXI. r. 19.] If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to

the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Rule 20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment (p. 96).

The following is the notice referred to in rule 17, p. 101:—

<i>Ord. XXXI. r. 15.]</i>	Notice to any party	Notice to produce documents.
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Ord. XXXI. r. 15.] Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B.) hereto.

Appendix (B.), Form 10.]

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Form of notice
to produce.

In the High Court of Justice.

Q. B. Division.

A. B. *v.* C. D.

Take notice, that the [plaintiff *or* defendant] requires you to produce for his inspection the following documents referred to in your [statement of claim, *or* defence, *or* affidavit, dated the day of , A.D.].

[Describe documents required.]

X. Y.,

To Z., Solicitor to the .
Solicitor for .

Solicitor for

Ord. XXXI. r. 16.] The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a

Notice to
inspect.

time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B.) hereto, with such variations as circumstances may require.

Appendix (B.), Form 11.]

Form of notice.

FORM OF NOTICE TO INSPECT DOCUMENTS.

In the High Court of Justice.

Q. B. Division.

A. B. v. C. D.

Take notice, that you can inspect the documents mentioned in your notice of the day of , A.D. [except the deed numbered in that notice] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff *or* defendant] objects to giving you inspection of the documents mentioned in your notice of the day of , A.D. , on the ground that [*state the ground*].

Particular attention to the effect of the following rule is directed.

Notice to inspect documents referred to in pleadings.

Ord. XXXI. r. 14.] Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not

afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

For a Special Case.

Master.

Ord. XXXIV. r. 2.] If it appear to the court or a judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

By summons at the instance of either party to show cause Summons.
why the facts of this case should not be stated in the form
of a special case for the opinion of the court.

The production of the pleadings will generally be sufficient Materials.
materials for the guidance of the Master, but it may be
deemed necessary to have affidavits of facts.

An order will be granted when the question to be decided is one only of law, and will not be allowed where the legal liability depends on disputed facts. (Lush, J., L. T., J. C. 13.)

The judge has power to make the order at any time, and ought to do so before statement of claim, if it is made clear that the point of law ought to be decided first. (*Metropolitan Board of Works v. New River Co.*, Weekly Notes, June 10, 1876, Q. B. 194.)

Order.

Upon the order being made the special case must be prepared by the parties, and statements therein in dispute between them will be settled by the Master upon a summons being taken out for that purpose.

Ord. XXXIV. r. 4.] No special case in an action to which a married woman; infant, or person of unsound mind is a party shall be set down for argument without leave of the court or a judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

Arbitrator may state special case; see Order XXXVI. r. 34, p. 112.

Printing
special case.

Ord. XXXIV. r. 3.] Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff.

Delivery to
judges.

By R. G. H. 1853, r. 16, it is required, that, four clear days before the day appointed for argument, four copies shall be delivered to the senior judges of the court, two by plaintiff and two by defendant. By this rule, however, all the books

are to be delivered by the plaintiff, but the number of copies have not been fixed. The maximum number of judges constituting the court being three, it would appear that three copies are sufficient.

If not delivered within the proper time, an *ex parte* application for leave to deliver them *nunc pro tunc* must be made to the Master. Always granted upon a statement of the cause of delay, provided it is not a wilful delay.

Leave required
to deliver copies
nunc pro tunc.

Upon production of the order the judges' clerks at chambers will receive the copies and enter them in a book kept for that purpose.

It is to be observed, that, if the books are not delivered before the hearing of the case, it will be struck out.

Effect of non-
delivery.

Ord. IV. Additional Rules, August, 1875.]
The 3rd rule of the Order XXXIV. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to a special case, pursuant to the Act of 13 & 14 Vict. c. 35.

This refers to printing special cases in equity.

To change the Venue.

Master.

Ord. XXXVI. r. 1.] There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall,

Local venue
abolished.

unless a judge otherwise orders, be the county of Middlesex. Any order of a judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

All local venues in civil actions are by this rule abolished, and the plaintiff has the right of fixing the place of trial, subject to the control of a judge over his choice if it appears to be inconvenient; but, once determined, the venue cannot be changed without an order of a judge, or by the consent of the parties.

Affidavit in support.

Either party can, take out the summons, which must be supported by a strong affidavit of the advantages of trying the case at the place sought, or that defendant is not likely to have a fair trial, and that the application is not made for the purpose of delay.

Such a preponderance of convenience in trying elsewhere must be shown as to oust plaintiff of his right. (*Plum v. Normanton Iron Co.*, L. T., J. C. 307.)

It is quite immaterial where the defendant lives. (*Quain, J.*, L. T., J. C. 122.)

To examine Witness vivâ voce.

Master.

Examination
of witness
vivâ voce.

Ord. XXXVII. r. 4.] The court or a judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any such cause or matter to give such depo-

sition in evidence therein on such terms, if any, as the court or a judge may direct.

Ex parte on affidavit of solicitor to the party applying, stating—

1. That A. B. is a necessary and material witness on behalf of the [plaintiff or defendant]. Affidavit in support.

2. That he is unable to give evidence in open court by reason of [any special reason, such as illness, the nature of which must be stated, or necessarily leaving the country].

3. Praying that he may be examined before C. D., or, if abroad, that a commission may issue. Commission.

The order requires notice to be given to the opposite solicitor of the time and place of examination, and further that the examination when taken be filed with the masters of the court; and provides that an office copy may be read and given in evidence on the trial of the cause, saving all just exceptions. Order.

Proof of continued absence or illness must be given at the trial, and for this purpose the affidavit of the solicitor is deemed sufficient. Proof of continued absence or illness must be given.

To countermand Notice of Trial.

Master.

Ord. XXXVI. r. 13.] No notice of trial shall be countermanded, except by consent, or by leave of the court or a judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

By summons to be at liberty, &c., supported by an affidavit of the cause why delay is required, such as the absence of a material witness. Notice must be given four days before the day of trial, unless otherwise ordered.

To refer to Master.

Master.

Powers of court with respect to proceedings before referees.

36 & 37 Vict. c. 66, s. 59.] With respect to all such proceedings before referees and their reports, the court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

17 & 18 Vict. c. 125, s. 3.

Power of judge to refer.

The Common Law Procedure Act, 1854, s. 3, enacts: "If it be made to appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, upon such terms as to costs and otherwise, as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred."

Summons to refer.

Where the question in dispute consists wholly or in part of mere account, upon a summons taken out by either party to show cause why the action should not be referred to the Master, an order will be made referring either to the Master or to some person to be named by the parties. Usually it is ordered that the costs of the cause shall abide the event, and the costs of reference and award to be in the discretion of the arbitrators.

Costs of reference.

Under this section, the cause only, and not all matters in

difference, can be referred (*Kendill v. Bennett*, 18 C. B. 173); but where the matter in dispute consists in part of matters of mere account, the whole may be referred. (*Brown v. Emerson*, 17 C. B. 361.)

Where there are matters in difference besides the account, it is advisable, to save expense, to consent to referring the whole matter.

To refer to an Official or Special Referee.

Master.

36 & 37 Vict. c. 66, s. 57.] In any cause or matter (other than a criminal proceeding by the crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the court or a judge, conveniently be made before a jury, or conducted by the court through its other ordinary officers, the court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees

Power to direct trials before referees.

shall be conducted in such manner as may be prescribed by rules of court, and subject thereto in such manner as the court or judge ordering the same shall direct.

36 & 37 Vict.
c. 66, s. 83.

The advantage of an action being referred to an official referee, instead of to the Master, is that the investigation can be, when necessary, local. Sect. 83 of the act provides: "Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court, or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament."

Ord. XXXVI. r. 30.] Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject to the order of the court or a judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the court or a judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury.

Ord. XXXVI. r. 34.] The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences

therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court may direct; and the court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee.

A judge has power to direct a reference to a particular official referee if it appears to him expedient; and unless he does so, it will be assigned by rotation.

Ord. XXXVI. r. 29c, Rule 16 of June, 1876.] The two last preceding rules of this Order (assigning actions by rotation, *post*, p. 114) are not to interfere with the power of the court, or of the judge at chambers, to direct or transfer a reference to any one in particular of the said official referees, where it appears to the court or the judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in rule 2 of the second of the said Consolidated General Orders, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business, according to such rotation as aforesaid, shall have regard to any such reference or transfer.

Cause may be referred to a particular referee.

By summons to show cause why the action should not be referred to an official referee. The statement of claim and Summons.

defence, or either of them, will generally be sufficient to support the summons. Reading a lot of letters is not what the act means by a prolonged examination of documents.

An action for negligence brought by trustees against their solicitors. Defendants denied their liability. Lush, J., in making no order, said, "My power is limited by the act to making the order asked for in causes 'where any prolonged examination of documents or accounts, or any scientific or local investigation,' is required; and here the question of accounts is quite a subordinate one." (L. T., J. C. 15.)

Otherwise by
rotation.

Ord. XXXVI. r. 29a, Rule 14 of June, 1876.] The business to be referred to the official referees appointed under the Supreme Court of Judicature Act, 1873, shall be distributed among such official referees in rotation by the clerks to the registrars of the Supreme Court, Chancery Division, in like manner in all respects as the business referred to conveying counsel appointed under the act of the 15 & 16 Vict. c. 80, s. 41, is directed to be distributed by the second of the Consolidated General Orders of the Court of Chancery.

Ord. XXXVI. r. 29b, Rule 15 of June, 1876.] When an order shall have been made referring any business to the official referee in rotation, such order, or a duplicate of it, shall be produced to the registrar's clerk, whose duty it is to make such distribution as aforesaid; and such clerk shall (except in the case provided for by rule 29c of this Order), endorse thereon a note specifying the name of the official referee in rotation to whom such business is to be referred; and the Order so endorsed shall be a

sufficient authority for the official referee to proceed with the business so referred.

Reference by Consent.

When the parties consent to a reference to an arbitrator, to be named by themselves, an order is drawn up, upon lodging the consent signed by the solicitors to the parties, in the terms of the consent.

The following is the form of order generally in use, which can be adapted to meet the requirements of any particular case:—

Form of consent, order of reference.

“Upon hearing the solicitors on both sides, and by their consent, I do order that this action [*and all matters in difference*] be referred to the award, order, arbitrament, final end and determination of A. B., who shall have all the powers as to certifying of a judge of nisi prius, so as the said arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the said parties in difference, or such of them as shall require the same [or their respective personal representatives, if either of the said parties shall die before the making of the said award] on or before the day of now next ensuing, or on or before such further or ulterior day as the said arbitrator shall from time to time appoint and signify, in writing under his hand, to be indorsed on this my order.

“And, by the like consent, I further order that the said parties shall in all things abide by, perform, fulfil and keep such award, so to be made as aforesaid, and that the costs of the said action [*and of all matters in difference*], and of the costs of the reference and award, shall be in the discretion of the arbitrator.

“And, by the like consent, I further order that the said arbitrator shall be at liberty (if shall think fit) to examine the said parties to this suit, and their respective witnesses, upon oath or affirmation, and that the said parties do and shall produce before the said arbitrator all books, deeds, papers and writings, in their or either of their custody or power, relating to the matters in difference.

"And I further order, by and with such consent as aforesaid, that neither the plaintiff nor the defendant shall bring or prosecute any action against the said arbitrator or against each other, of and concerning the matters so as aforesaid referred; and that if either party shall by affected delay or otherwise wilfully prevent the said arbitrator from making an award, shall pay such costs to the other as the court shall think reasonable and just.

"And, by the like consent, I further order that, in the event of either of the said parties disputing the validity of the said award, so to be made and published as aforesaid, or moving the court to set the same aside, the court shall have power to remit the matters hereby referred, or any or either of them, to the reconsideration of the said arbitrator.

"And, by the like consent, I further order that, in the event of the said arbitrator declining to act, or dying before he shall have made his award, the said parties may, or, if they cannot agree, one of the judges of the High Court of Justice may, on application by either side, appoint a new arbitrator.

"And, by the like consent, I further order that this Order shall and may be made a rule of the High Court of Justice."

Care must be taken that all the conditions required are in the consent, for when an order of reference is drawn up by consent, the court will not amend it, unless it appears that there has been some omission on the part of its officer, or that by some accident or mistake the order is not in accordance with the intention of the parties, or that some fraud has been practised. (*Vandenbyl v. McKenna*, 3 L. R., C. P. 252; *Smurthwaite v. Richardson*, 15 C. B., N. S. 463.)

To compel the attendance of witnesses before the arbitrator an order for that purpose must be obtained.

Which order is granted upon filing with the judge's clerk a certificate of the solicitor to the party desirous of calling the witness.

The certificate must state,—

1. The names and addresses of the witnesses.
2. On whose behalf they are to be examined.
3. The name of the arbitrator, and that he has appointed such date and place to proceed with the arbitration.

It may also state that all or either of the witnesses are re-

Attendance
of witnesses
before
arbitrator.

Certificate for
attendance of
witnesses.

quired to produce such documents relating to the subject-matter of the reference that are in his custody or control.

No more than four witnesses will be inserted in one order, but any number may be included in the same certificate.

The service of this order must be accompanied by an appointment, signed by the arbitrator.

A prisoner can be brought up to give evidence before an arbitrator, under 16 & 17 Vict. c. 30, s. 9. To obtain his attendance, see *post*.

To transfer Action from one Division to another. Judge.

Ord. LI. r. 2.] Any action may, at any stage, be transferred from one division to another by an order made by the court or any judge of the division to which the action is assigned: Provided that no transfer shall be made without the consent of the president of the division to which the action is proposed to be transferred.

An action may be transferred from one division to another by the judge at chambers, although he is not a judge of the division to which the action is assigned (*Millman v. Mayhem*, 45 L. J. 334); it would be very inconvenient if it were not so. A judge sitting at chambers should be considered as acting therein as a judge of each division, and in fact does so act.

36 & 37 Vict. c. 66, s. 33.] All causes and matters which may be commenced in, or which shall be transferred by this act to, the High Court of Justice, shall be distributed among the several divisions and judges of the said High Court, in such manner as may from

Rules of court to provide for distribution of business.

time to time be determined by any rules of court, or orders of transfer, to be made under the authority of this act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

And section 34 assigns certain business to particular divisions, subject to rules.

Actions assigned to Chancery Division.

36 & 37 *Vict. c. 66, s. 34.*] There shall be assigned (subject as aforesaid) to the Chancery Division of the said court:

- (1.) All causes and matters pending in the Court of Chancery at the commencement of this act:
- (2.) All causes and matters to be commenced after the commencement of this act, under any act of parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from county courts:
- (3.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership or other accounts ;

The redemption or foreclosure of mortgages ;

The raising of portions, or other charges on land ;

The sale and distribution of the proceeds of property subject to any lien or charge ;

The execution of trusts, charitable or private ;

The rectification, or setting aside, or cancellation of deeds or other written instruments ;

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases ;

The partition or sale of real estates ;

The wardship of infants and the care of infants' estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said court : Actions assigned to the Queen's Bench Division.

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this act :

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court

of Queen's Bench in the exercise of its original jurisdiction, if this act had not passed :

Actions assigned to the Common Pleas Division.

There shall be assigned (subject as aforesaid) to the Common Pleas Divisions of the said court :

- (1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this act had not passed.

Actions assigned to Exchequer Division.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said court :

- (1.) All causes and matters pending in the Court of Exchequer at the commencement of this act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a court of revenue or as a common law court, if this act had not passed.

Actions assigned to Probate, Divorce and Admiralty Division.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court :

- (1.) All causes and matters pending in the Court of Probate, or the Court for

Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this act:

- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this act had not passed.

Sect. 11 of the Act of 1875 gives an option to plaintiff (subject to certain provisions) to choose in which division he will sue.

38 & 39 *Vict. c. 77, s. 11.*] Subject to any rules of court and to the provisions of the principal act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided that—

Provision as to option of plaintiff to choose division.

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached.

By Ord. V. r. 4, causes common to the Court of Admiralty and the other courts may be assigned to any division, *infra*.

By the following section power is given at any time, with or without application, to direct the transfer of an action.

Power of transfer.

36 & 37 *Vict. c. 66, s. 36.*] Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court may direct, from one division or judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

Option to choose division in certain cases.

Ord. V. r. 4.] Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice, which would have been within the non-exclusive cognizance of the High Court of Admiralty if the said act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the court. If so marked for the Chancery Division, the same shall be as-

signed to one of the judges of such division by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

If plaintiff exercises the option given to him wrongly, by assigning his action to a division to which it does not belong, sub-sect. 2 of sect. 11 empowers a judge to transfer the action to the proper division.

Sect. 11, sub-sect. (2).] If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of court or the provisions of the principal act or this act, the same ought not to be assigned, the court, or any judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the court or any judge thereof before any such transfer, shall be valid and effectual to all intents and

38 & 39 Vict.
c. 77.

Summary
power to trans-
fer where cause
improperly
assigned.

purposes in the same manner as if the same respectively had been taken and made in the proper division of the said court to which such cause or matter ought to have been assigned.

Under this section the only cause of transfer is the fact of the action itself properly belonging to the division to which it is sought to transfer it, and the consent of the president is unnecessary, and differs from Ord. LI. r. 2 (*ante*, p. 117), in this important respect: the latter rule leaves it to the discretion of the judge to say whether he will or not order the transfer.

Summons.

An application to transfer may be made at any stage of the proceedings by summons "to show cause why the action should not be transferred to the — division." It is to be observed that the transfer of an action does not affect the validity of the preliminary proceedings.

Consent of president to transfer.

The consent of the president of the division to which it is asked that the cause may be transferred must be obtained, but this is formal if the judge hearing the summons thinks it a fit cause to be so transferred, but the order is not effectual until this consent has been obtained. (*Humphreys v. Edwards*, 45 L. J., Ch. 112.)

Materials in support.

A statement of the cause of action will generally be sufficient material upon which the judge will decide, but it must be shown that the division to which it is proposed to transfer the action is better able to try it than the one in which it was commenced.

In an action for the possession of land; a counterclaim for the specific performance of an agreement for a lease. Held, the action ought to be transferred to the Chancery Division, on a *prima facie* case for specific performance being made out. (*Millman v. Mayher*, 45 L. J. 334.)

An application by defendants to transfer to the Admiralty Division an action for negligence arising out of a collision between two vessels in the Thames, plaintiffs' vessel being at anchor and defendants' being steered by a pilot. Archibald, J., refused the order, there being no question of seamanship

of complicity, simply a question of negligence. (*General Steam Navigation Co. v. L. & E. Shipping Co.*, L. T., J. C. 283.)

But in an action on a deed, defence that the deed was in equity void, and should be set aside on the ground of undue influence, Archibald, J., made an order to transfer to Chancery Division. (*Padwick v. Scott*, L. T., J. C. 298.)

Note that if the order be made to transfer to the Chancery or Probate Division, the order must assign it to one of the judges of such division.

Ord. LI. r. 3.] Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the judges of such division, to be named in the order.

Ord. LI. r. 1.] Any action or actions may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the president of the division.

Ord. LI. r. 2a, Rule 18 of June, 1876.] When an order has been made by any judge of the Chancery Division for the winding up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the judge in whose court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such judge of any action pending in any other division brought or continued by or against such

company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

To consolidate Actions.

Master.

Ord. LI. r. 4.] Actions in any division or divisions may be consolidated' by order of the court or a judge in the manner heretofore in use in the superior courts of common law.

Summons. By summons entitled in all the actions calling on plaintiff "to show cause why these actions should not be consolidated," issued at any time after service of the writ. (*Hollingsworth v. Brodrick*, 4 A. & E. 646.)

When several actions are brought by the same plaintiff against different defendants, and the questions in dispute in all are substantially the same, an order will be made staying proceedings in all the actions except one, until that one has been determined. The order binds the various defendants by the event of the action which proceeds, and they are jointly liable to contribute to the payment of the plaintiff's costs. (*Anderson v. Boynton*, 13 Q. B. 308.)

But the plaintiff is not so bound, and if the result of the first action is against him he may proceed with the second. (*Doyle v. Anderson*, 1 A. & E. 655; *Doyle v. Douglas*, 4 B. & Ad. 544.)

Actions are not consolidated on the ground that they are vexatious; but to save useless expenditure, and as it is considered that the plaintiff is protected from all injury by the undertaking of the defendants, the order will be made, although he refuses his consent. (*Hollingsworth v. Brodrick*, 4 A. & E. 646.)

Order. The general form of order as the summons is entitled in

all the actions and directs that all further proceedings in the last-mentioned actions be stayed until after the trial of the first-mentioned action; the defendants in the last-mentioned actions undertaking to be bound and concluded by the verdict in the first-mentioned action, provided such verdict shall be to the satisfaction of the judge who may try the same, together with such other terms as the particular case requires.

To try in the County Court.

Master.

36 & 37 Vict. c. 66, s. 67.] The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Acts, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a county court.

Where, in any action of contract, brought or commenced in any of her Majesty's superior courts of common law, the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a judge at chambers for a summons to the plaintiff, to show cause why such action should not be tried in the county court, or one of the county courts in which the action might have been commenced; and on the hearing of such summons the judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the

30 & 31 Vict.
c. 142, s. 7.

order with the registrar of the county court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent, by post or otherwise, by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such county court, as if the action had originally commenced in such county court; and the costs of the parties in respect of proceedings subsequent to the order of the judge of the superior court, shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings previously had in the superior court shall be allowed according to the scale in use in such latter court. (See as to costs, Ord. XXXVI. r. 2 of County Court Rules.)

Application by summons issued within eight days of the service of the writ.

That questions of law are likely to arise is a good cause why the action should not be tried in the county court.

There is also power to make the order after issue has been joined, upon the application of either party, but of this the Judicature Acts are silent.

19 & 20 Vict.
c. 108, s. 26.

Where in any action of contract, brought in a superior court, the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, a judge of a superior court, on the application of either party after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name; and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue; and the judge of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise, by the registrar to both parties or their attorneys; and after such hearing, the registrar shall certify the result to the Master's office of such superior court, and judgment in accordance with such certificate may be signed in such superior court.

*To try in the County Court or give Security
for Costs. Master.*

In actions enumerated in the section where plaintiff has Summons.
no visible means, the defendant can take out a summons calling upon plaintiff to show cause why he should not give security for defendant's costs, or the cause be remitted to the county court. This must be supported by an affidavit that plaintiff has no visible means.

In opposition the plaintiff must show that he has, and also that he has a cause of action fit to be prosecuted in a superior court.

The order, if made, will direct that unless within Order.
days full security for defendant's costs be given to the satisfaction of one of the masters, the cause be remitted to the county court.

The following is the section referred to:—

"It shall be lawful for any person against whom an action 30 & 31 Vict.
for malicious prosecution, illegal arrest, illegal distress, c. 142, s. 10.
assault, false imprisonment, libel, slander, seduction, or other action of tort, may be brought in a superior court to make an affidavit, that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the court in which the action is brought shall have power to make an order that, unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said court, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior courts, all proceedings in the action shall be stayed, or in the event of the plaintiff being unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a county court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such county court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent, by post or otherwise, by the registrar to both parties or their attorneys; and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said

county court should have power to try the said action, and the same had been commenced by plaint in the said county court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the superior court, shall be allowed according to the scale of costs in use in the county courts, and the costs of the proceedings in the superior court shall be allowed according to the scales in use in such latter court." (See as to costs, Ord. XXXVI. r. 2, of County Court Rules.)

Removal of Cause or Judgment from County Court by Certiorari. Master.

19 & 20 Vict.
c. 108, s. 38.
Removal of
cause.

"Any action commenced in a county court for a claim not exceeding five pounds may be removed by writ of certiorari into a superior court, if such superior court or a judge of the superior court shall deem it desirable that the cause shall be tried in such superior court; and if the party applying for such writ shall give security, to be approved of by one of the masters of such superior court for the amount of the claim, and the costs of the trial, not exceeding in all one hundred pounds, and shall further assent to such terms, if any, as the superior court or judge shall think fit to impose."

19 & 20 Vict.
c. 108, s. 49.
Removal of
judgment.

"If a judge of a superior court shall be satisfied that a party against whom judgment for an amount exceeding twenty pounds, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may if he shall think fit, and on such terms as to costs as he may direct, order a writ of certiorari to issue to remove the judgment of the county court into one of the superior courts, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of such superior court; but no action shall be brought upon such judgment."

The application may be made *ex parte*, and to remove the judgment advisable, but a summons may be ordered.

Matters in
counter-claim
beyond juris-
diction.

Power is also given in cases where the counter-claim involves matter beyond the jurisdiction of the county court, on the application of either party by summons, to transfer the same to the superior court.

36 & 37 *Vict. c. 66, s. 90.*] Where in any proceeding before any such inferior court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, such defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the inferior court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

To stay Proceedings under Sect. 24, Sub-sect. 5.
Judge.

36 & 37 *Vict. c. 66, s. 24, sub-sect. (5).*] No Prohibition.
cause or proceeding at any time pending in the High Court of Justice, or before the Court of

Appeal, shall be restrained by prohibition or injunction ; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto : Provided always, that nothing in this act contained shall disable either of the said courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit ; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this act had not passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice ; and the court shall thereupon make such order as shall be just.

Summons.

By summons to show cause why the proceedings herein should not be stayed on the ground, &c.

Supported by affidavit that other proceedings have been, or are about to be, instituted in respect of the same matter, for instance, an action commenced for the amount of a solicitor's bill of costs pending an order for taxation.

May be ex parte.

The application may in certain cases be made ex parte.

Application by defendant in ejectment to stay proceedings by plaintiff against three subsidiary tenants. Lush, J., made an order *ex parte*. (*Blewitt v. Dowling*, L. T., J. C. 41.)

Injunction.

Judge.

36 & 37 *Vict. c. 66, s. 25, sub-sect. (8).*] A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

The application for an interlocutory injunction should be made without delay, and may be either *ex parte* or by summons. Either *ex parte*
or by sum-
mons.

Ord. LII. r. 4.] An application for an order under section 25, sub-section 8, of the act, or under rules 2 or 3 of this Order, may be made to the court or a judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under the said rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

The principle upon which granted.

The injunction is granted solely upon the principle of preserving property until a decision on legal rights is obtained, and a *prima facie* case in support of such right must appear in the affidavit used in support of the application.

An injunction ought not to be granted *ex parte*, unless in cases of emergency, as for instance, where in an action for trespass it appeared that defendant was actually pulling down a house. Upon an affidavit of the fact the injunction was granted at once. (*Fenner v. Bedford*, L. T., J. C. 125.)

Affidavit in support.

The affidavit in support of the *ex parte* application is usually made by the plaintiff, but it may be made by any person acquainted with the facts. It must show—

1. The right of the plaintiff.
2. Some actual violation of the right or a sufficient ground to apprehend it.
3. That the plaintiff has sustained, or is likely to sustain, pecuniary or irreparable loss (as the cutting down of trees) from the acts complained of.

Office copy of affidavit.

The party against whom an injunction is granted, upon making a request in writing to the party obtaining the injunction, or his solicitor, undertaking to pay the proper charges, is entitled to be furnished with a copy of the affidavit used in support of the application.

Ord. V. r. 10, Additional Rules of August, 1875.] In the case of an ex parte application for an injunction or writ of *ne exeat regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the court.

Upon an affidavit disclosing nothing but what might be compensated for by damages, Denman, J., refused the injunction. (*Makin v. Barrow*, L. T., J. C. 308.)

In an action of ejectment, plaintiff being under a covenant with the superior landlord to insure, an application to restrain defendant from using a steam engine that was dangerous to the property, and in consequence the fire office refused to continue the insurance, an injunction was granted. (*Tozer v. Walford*, L. T., J. C. 152.)

It sometimes happens that upon an ex parte application Summons. the judge will, if he thinks the case is not so urgent as to require his immediate interference, or that the affidavits are not positive enough, order a summons to issue calling upon defendant to show cause why the injunction should not be issued.

Upon an ex parte application in an action for trespass for an injunction to restrain defendant from continuing the trespasses, it appeared the trespass was simply entering upon land with a horse and cart, Lindley, J., as no serious injury to the property was threatened, ordered a summons. (L. T., J. C. 237.)

A summons should be applied for whenever the injunction is not urgent.

It must be supported by similar affidavits, and the only difference between this and the ex parte application is, that the defendant has an opportunity of being heard.

For Sale of Perishable Goods.

Judge.

Order for sale
of goods of a
perishable
nature.

Ord. LII. r. 2.] It shall be lawful for the court or a judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

By summons, see rule 4, p. 134.

For Detention, Preservation and Inspection of Property—Samples and Experiments.

Judge.

Order for de-
tention, preser-
vation or in-
spection of
property.
Taking sam-
ples and
making experi-
ments.

Ord. LII. r. 3.] It shall be lawful for the court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to

be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

By summons (see rule 4, p. 134); for instance, to be at liberty to inspect the defendant's works, or to examine the process of manufacture, or to make necessary experiments.

In an action of trespass between adjoining colliery proprietors, Lindley, J., on the application of plaintiff, made an order to inspect defendant's mine for the purpose of taking measurements in order to see how far they had trespassed, and to ascertain how much coal had been taken away. (*Cooper v. Ince Hall Company*, L. T., J. C. 226.)

An order may be made under the obligation of confidence for skilled persons to make experiments for the purpose of giving evidence only.

Ord. LII. r. 1.] When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

Preservation
or interim
custody of the
subject-matter
of litigation.

By summons, supported by the pleadings showing defendant's admission of the plaintiff's right, or the probability of the establishment of his right.

Or by affidavit to the same effect.

Ord. LII. r. 5.] An application for an order under rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the court or a judge.

Order that property held by virtue of a lien to be given up upon payment into court of the amount in respect of which the lien is claimed.

Ord. LII. r. 6.] Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such court or judge may direct, and that upon such payment into court being made, the property claimed be given up to the party claiming it.

Where specific property other than land is claimed from a party who holds it by virtue of an alleged lien, an order may be made for delivering up the property upon payment into court of the amount of the lien, together with interest and costs.

To set down Motion for Judgment.

Master.

By summons.

Leave to set down motion for judgment.

Ord. XL. r. 8.] Where issues have been ordered to be tried, or issues or questions of fact

to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

Ord. XL. r. 9.] No action shall, except by leave of the court or a judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. Must be within one year.

Ord. XL. r. 11.] Any party to an action may at any stage thereof apply to the court or a judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has For relief on admission of facts.

appeared from the pleadings. The court or a judge may, on any such application, give such relief, subject to such terms, if any, as such court or judge may think fit.

As to proceedings in court upon motion for judgment, see remaining rules of this Order, post.

Leave to issue Execution in certain Cases.

Master.

Leave to issue execution must be obtained.

Conditional or
contingent.

Ord. XLII. r. 7.] Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

This rule is more particularly applicable to cases in Chancery, and it is to be observed that a demand must be made upon the party against whom relief is sought before the application is made.

Ord. XLII. r. 8.] Where a judgment is ^{Against} against partners in the name of the firm, execu- ^{partners.} tion may issue in manner following :

- (a.) Against any property of the partners as such :
- (b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner :
- (c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do ; and the court or judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Ord. XLII. r. 19.] Where six years have ^{Six years after} elapsed since the judgment, or any change has ^{judgment.} taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of

the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms as to costs or otherwise, as shall seem just.

In lieu of the practice under the C. L. P. Act, 1852, ss. 129 to 134, of entering a suggestion or proceeding by writ of revivor.

By summons, supported by affidavit of the facts and of the right to judgment. The judge may either give leave to issue execution, or order an issue to be tried to determine the rights of the parties.

Attachment of Debts.

Examination of Judgment Debtor.

Master.

Examination of judgment debtor as to debts due to him.

Ord. XLV. r. 1.] Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the court or a judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the court, or such other person as the court or judge shall appoint; and the court or judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

Summons.

By summons.

The rule is copied from the 60th section of the C. L. P. Act, 1854, and the proceedings throughout seem to be the same; but there is nothing in the Orders under this act analogous to sect. 28 of the C. L. P. Act, 1860, which gives a discretion to the judge to refuse to interfere, where, from the smallness

of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

The object of introducing this rule is to give to the Chancery Division a power analogous to that hitherto possessed by the Common Law Courts.

The order, which is the affirmative of the summons, Order. should, if possible, be personally served, as no proceedings can be taken to enforce the attachment of the debtor unless it can be shown that he has knowledge of the order having been made. (*Mason v. Muggeridge*, 18 C. B. p. 42.)

Garnishee.

Master.

Either before or after the examination of the judgment debtor an ex parte application to the Master may be made to attach debts due.

Ord. XLV. r. 2.] The court or a judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court or a judge or an officer of the court, as such court or judge shall appoint, to

To attach debt
due from
garnishee.

show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Affidavit in support.

The affidavit in support of this application must state—

1. That judgment was recovered on the day of
for £ s. d.
2. That it is still unsatisfied to the amount of £ s. d.
3. That the garnishee is indebted to the judgment debtor
and is within the jurisdiction.

Order nisi.

Upon this an order nisi embodying the facts of the affidavit and ordering that all debts owing (or accruing) from the garnishee to the judgment debtor be attached to answer a judgment recovered against the judgment debtor by the judgment creditor, and concluding with a summons calling upon the garnishee "to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt," is granted,—generally made returnable in eight days.

Service of the order binds the debt.

This order must be served upon the garnishee, and for its effect see rule 3, below.

Ord. XLV. r. 3.] Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court or judge shall direct, shall bind such debts in his hands.

Debts attachable.

The following debts have been held attachable:

A debt due to one or more joint judgment debtors to satisfy the judgment against all. (*Miller v. Mynn*, 1 E. & E. 1075.)

Rent due in the hands of a tenant. (*Mitchell v. Lee*, Law Rep., 2 Q. B. 259.)

The pension of a retired Indian officer. (*Dent v. Dent*, L. R., 1 P. & D. 366.)

Debts not attachable.

While, on the other hand, the 33 & 34 Vict. c. 30, protects wages of a servant, labourer or workman from attachment.

Debts *bonâ fide* assigned by the judgment debtor before the judgment (*Hirsch v. Coates*, 18 C. B. 757), and unliquidated damages (*Johnson v. Diamond*, 11 Ex. 73), cannot be attached.

Invariably the garnishee will consent to the order being made absolute upon payment of his costs.

The order absolute directs that the garnishee do forthwith pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt, and that in default thereof execution may issue for the same.

Order absolute.

Ord. XLV. r. 4.] If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

To levy amount due from garnishee to judgment debtor.

Ord. XLV. r. 5.] But if the garnishee disputes his liability, the court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Judge may order judgment creditor to sue garnishee.

For modes of trial, see *Ord. XXXVI. r. 2, post.*

If the judgment creditor declines to proceed by writ, the attachment may be discharged, and the judgment creditor

be ordered to pay the costs. (*Wintle v. Williams*, 3 H. & N. 288.)

Garnishee
interpleader.

Ord. XLV. r. 6.] Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court or judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Summons.

Upon the hearing of the order nisi this suggestion occurs, and then an order in the form of a summons is issued, calling upon the parties claiming to be entitled to the said debt, and the judgment creditor with the garnishee, to attend and state the nature and particulars of their respective claims to such debts, and maintain or relinquish the same, and abide such order as may be made.

The proceedings are now of a summary character, and come before the judge, unless by consent, when they may be continued before the Master.

Judge may
bar claim
of third person
and make
orders.

Ord. XLV. r. 7.] After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the court or judge may order to appear, or in case of such third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or make such other order as such court or judge shall think fit, upon such terms, in all cases, with respect to

the lien or charge (if any) of such third person, and to costs, as the court or judge shall think just and reasonable.

Ord. XLV. r. 8.] Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed. Garnishee discharged.

Payment by the garnishee to the judgment creditor, upon notice of attachment, is no discharge of the debt due from the garnishee to the judgment debtor, unless there is a judge's order for payment. (*Turner v. Jones*, 1 H. & N. 878).

Ord. XLV. r. 10.] The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge. Costs of proceedings.

Ord. XLV. r. 9.] There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer. Attachment book.

At the Master's office of the division to which the judgment belongs.

Charging of Stock or Shares.

Judge.

Ord. XLVI. r. 1.] An order charging stock or shares may be made by any divisional court or by any judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14, 15, and 3 & 4 Vict. c. 82, s. 1.

1 & 2 Vict.
c. 110, s. 14.

Sect. 14 of 1 & 2 Vict. c. 110, enacts that if any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster, shall have any government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor: Provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

1 & 2 Vict.
c. 110, s. 15.

And sect. 15, in order to prevent any person against whom judgment shall have been obtained from transferring, receiving or disposing of any stock, funds, annuities or shares hereby authorized to be charged for the benefit of the judgment creditor under an order of a judge, be it further enacted, that every order of a judge charging any government stock, funds or annuities, or any stock or shares in any public company, under this act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any

Application to
be *ex parte*.

government stock, funds or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or, in case of corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that, unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney, or agent, be made absolute: Provided that any such judge shall, upon the application of the judgment debtor or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

Penalty for
permitting
transfer after
notice.

And by sect. 1 of 3 & 4 Vict. c. 82, the aforesaid provisions of the 1 & 2 Vict. c. 110, shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities or shares as aforesaid, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares; and whenever any such judgment debtor shall have any estate, right, title or interest, vested or contingent, in possession,

3 & 4 Vict.
c. 82, s. 1.

remainder or reversion, in, to or out of any such stocks, funds, annuities or shares as aforesaid, which now are or shall hereafter be standing in the name of the Accountant-General of the Court of Chancery or the Accountant-General of the Court of Exchequer, or in, to or out of the dividends, interest or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: Provided always, that no order of any judge as to any stock, funds, annuities or shares standing in the name of the Accountant-General of the Court of Chancery or the Accountant General of the Court of Exchequer, or as to the interest, dividends or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities or shares, or the interest, dividends or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

35 & 36 Vict.
c. 44, s. 6.

The 35 & 36 Vict. c. 44, s. 6, which is prospective as well as retrospective, abolishes the office of Accountant-General of the Court of Chancery and transfers to the Paymaster-General all funds, &c. in his hands, and makes the Paymaster-General subject to the like trusts, orders and directions, &c.

Affidavit in
support.

The application is made ex parte, and must be supported by affidavit, stating—

1. That judgment was recovered on for £ .
2. That it is still unsatisfied.
3. That [properly describe the stock or shares] stands in the judgment debtor's name [or in trust for him as the case may be.]

Form of order.

Upon this is granted an order nisi setting out the affidavit, and stating that unless sufficient cause be shown before the judge at chambers, on the day of , the defendant's interest in the (stock or shares) so standing (as in affidavit),

shall, and in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

A copy of the order must be served upon the Governor and Company of the Bank of England, or public company, as well as upon the defendant. The service of the order restrains them from transferring the stock or shares so charged until the order is made absolute or discharged.

The adjudication upon the order nisi is by the judge. The order upon being made absolute operates as from the date of the order nisi. (*Haley v. Barry*, 3 L. R., Ch. 452.)

Upon an affidavit of service and attendance on defendant and on the person or persons to be restrained, an order will be made absolute.

Interpleader.

Judge (*Matters of Practice*, Master).

Ord. I. r. 2.] With respect to interpleader, the procedure and practice now used by courts of common law under the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

The general principles of these acts are fully treated in Day's Common Law Procedure Acts, to which reference should be made for information required beyond that found here, which is simply the practice prevailing at the judge's chambers.

Interpleader is of two kinds. That for the protection of ordinary persons harassed by conflicting claims, and that for

the protection of sheriffs arising out of disputed claims to goods seized in execution.

Principles of interpleader.

A general outline is all that is necessary here, and that is—
 That the person applying that others may be required to interplead be already defendant at the suit of one of them.
 That the claims of both claimants be in respect of the very same matter. (*Slaney v. Sidney*, 14 M. & W. 800.)
 That the party applying claims no interest in the matter in dispute. (*Braddick v. Smith*, 9 Bing. 84.)
 That the applicant be not colluding with either party. (*Belcher v. Smith*, 9 Bing. 82.)
 That the applicant be in possession of the matter in dispute, and thus able to obey such order as may be made. (*Ireland v. Bushell*, 5 Dowl. 147.)
 That the same question be raisable upon the interpleader issue as was in dispute between the original parties. (*Baker v. Bank of Australasia*, 1 C. B., N. S. 515; 26 L. J., C. P. 93.)

Summons.

The application is by summons issued at any time after service of the writ of summons and before delivering a defence, calling upon plaintiff and the claimant "to appear and state the nature and particulars of their respective claims and maintain or relinquish the same."

Affidavit in support.

It must be supported by an affidavit entitled in the cause, setting forth—

1. The facts of the claim.
2. That defendant does not claim any interest in the subject-matter thereof; and
3. That he does not in any manner collude with the other parties.

Claimant's affidavit.

Upon the hearing the claimant must support his claim by affidavit stating the nature of his claim, which, if it shows a *prima facie* claim, he will be made defendant in lieu of the original defendant, or be ordered to proceed to trial on one or more feigned issues; or with the consent of plaintiff and the claimant the judge may decide it in a summary manner. Such judgment is final. (1 & 2 Will. 4, c. 58, s. 1, p. 155.)

Sheriff's interpleader.

The sheriff's interpleader between execution creditors and persons claiming goods seized in execution differs but slightly from this practice.

One distinction is, that the sheriff can apply for an interpleader order, although no action has been commenced against him, provided that a *bonâ fide* claim has been made to goods lawfully seized by him. He should, however, make the application as soon as he reasonably can.

The summons calls upon the execution creditor and the claimant to appear and support their respective claims, &c., and should be supported by an affidavit of facts in the first instance.

Upon the hearing the claimant must be prepared to support his claim by an affidavit of facts; and if it appears there is a substantial claim, then, unless they consent to the matter being disposed of summarily, or it be one which the judge has power to dispose of without consent, an issue will be directed to be tried, and an order drawn up in the following terms, generally known as Form B.:—

“That upon payment of the sum of £ *[generally the amount of claim and a sum for costs]* into court by the said claimant within *Order, Form B.* days from this date, or upon his giving within the same time security to the satisfaction of one of the masters for the payment of the same amount by the said claimant according to the directions of any rule of court or judge’s order to be made herein, and upon payment to the said sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods and chattels seized by him under the writ of *fiery facias* issued herein.

“And further, that unless such payment shall be made, or such security be given within the time aforesaid, the said sheriff do proceed to sell the said goods and chattels, and pay the proceeds of the sale, after deducting the expenses thereof, and the possession money from this date, into court in the cause to abide further order herein.

“And further, that the parties do proceed to the trial of an issue of the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be defendant, and that the question to be tried shall be whether at the time of seizure by the sheriff the goods, &c. were the property of the claimant as against the execution creditor.

“And further, that such issue shall be prepared and

delivered by the plaintiff therein within from this date,
and be returned by the defendant therein within days,
and shall be tried at .

“And I reserve the question of costs and all further questions until after the trial of the said issue. And I further order that no action shall be brought against the said sheriff for the seizure of the said goods.”

Claimant not
appearing.

If the claimant fails to appear and support his claim, he will be barred.

Execution
creditor not
appearing.

If the execution creditor fails to appear, the sheriff will be ordered to withdraw, and he will be protected against the execution creditor by it being further ordered that “no action be brought against him.”

If neither party appears, the sheriff is generally ordered to sell as much as would pay his expenses and withdraw.

The sheriff is only entitled to the expenses incurred in keeping possession by reason of the claim, but extra costs have been allowed where extraordinary attention is required, such as the employment of clerks.

Costs.

Costs should be applied for in the first instance to the judge hearing the application.

Attention is directed to the following sections of 23 & 24 Vict. c. 126 (Common Law Procedure Act, 1860):—

Judge may
direct sale of
goods seized.
23 & 24 Vict.
c. 126, s. 13.

Sect. 13. “When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned [superior courts at Westminster] courts, and some third person claims to be entitled under a bill of sale, or otherwise, to such goods or chattels, by way of security for a debt, the court or a judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just.”

Power to judge
to decide cer-
tain cases sum-
marily.

23 & 24 Vict.
c. 126, s. 14.

Sect. 14. “Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the court or judge, wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to

determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just."

The object of this section is that small matters may be disposed of, to save the parties the expense which they really ought not to bear.

Sect. 15. "In all cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the court." Special case may be stated. 23 & 24 Vict. c. 126, s. 15.

Sect. 17. "The decision of the court or judge shall be final and conclusive against the parties and all persons claiming by, from or under them."

Notwithstanding the provisions of the Judicature Act, 1873, ss. 19, 50, no appeal lies to a divisional court against an order made by a judge at chambers under the Common Law Procedure Act, 1860, in the exercise of his summary jurisdiction upon the facts of an interpleader case, even although the parties and the judge desire and consent to such an appeal. (*Dodds and another v. Shepherd*, 45 L. J., Ex. 457.)

For the convenience of reference, the 1 & 2 Will. 4, c. 58, is here given.

Sect. I. "Whereas it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof, be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, that upon application made by or on the behalf of any defendant sued in any of his Majesty's courts of law at Westminster, or in the Court of Common Pleas of the county palatine of Lancaster, or the Court of Pleas of the county palatine of 1 & 2 Will. 4, c. 58, s. 1. Upon an application by a defendant in an action of assumpsit, &c., stating that the right in the subject-matter is in a third party to appear and maintain or relinquish his claim.

Durham, in any action of assumpsit, debt, detinue or trover, such application being made after declaration and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject-matter of the action in such manner as the court (or any judge thereof) may order or direct, it shall be lawful for the court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well as of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable."

Judgment to
be final.

Sect. II. "And be it further enacted, that the judgment in any such action or issue as may be directed by the court or judge, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from or under them."

Claimant fail-
ing to appear
to be barred.

Sect. III. "And be it further enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party, and all persons claiming by, from or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving, nevertheless, the right or claim of such third party against the plaintiff; and thereupon to make

such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable."

Sect. IV. "Provided always, and be it further enacted, that no order shall be made in pursuance of this act by a single judge of the Court of Pleas of the said county palatine of Durham who shall not also be a judge of one of the said courts at Westminster, and that every order to be made in pursuance of this act by a single judge not sitting in open court shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge."

Sect. V. "Provided also, and be it further enacted, that if upon application to a judge in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court; and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge."

Power of judge to refer to the court.

Sect. VI. "And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution, under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court."

For relief of sheriffs.

Rules, orders,
&c. may be
made evidence.

Sect. VII. "And be it further enacted, that all rules, orders, matters and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *feri facias* or *capias ad satisfaciendum* adapted to the case, together with the costs of such entry and of the execution, if by *feri facias*; and such writ or writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees and no more, as upon any similar writ grounded upon a judgment of the court."

Sect. VIII. "And whereas by a certain act made and passed in the last session of parliament, intituled 'An Act to improve the Proceedings in Prohibition and on Writs of Mandamus,' it was among other things enacted, that it should be lawful for the court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or, in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case as were or might be given or mentioned by or in any act passed or to be passed during that present session of parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims; and whereas no such act was passed during the then present

session of parliament, be therefore enacted, that upon any application as is in the said act and hereinbefore mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present act."

Proceedings under the Debtors Act, 1869.

For Committal of Judgment Debtor.

Judge.

It is only necessary to notice here the fifth section.

32 & 33 Vict. c. 62, s. 5.] "Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that, or any other competent court.

Power of committal for small debts.

"Provided (1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say:—

(a) Be exercised only by a judge or his deputy, and by an order made in open court, and showing on its face the ground on which it is issued:

(b) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs:

Not exceeding 50*l*.

(c) Be exercised only as respects a judgment of a county court by a county court judge or his deputy:

"(2) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same."

Proof of means must be given.

Debtor may be examined.

“Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Payment by instalments.

“Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise in the prescribed manner.

“For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Substituted for ss. 98 and 99 of County Court Act of 1846.

“Persons committed under this section by a superior court may be committed to the prison in which they would have been confined, if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ. This section, so far as it relates to any county court, shall be deemed to be substituted for sections 98 and 99 of the County Court Act, 1846, and that act and the acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court. No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

“Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner, to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).”

The practice under this section is regulated by the Regulæ Generales of Michaelmas Term, 1869.

R. G. M. T. 1869, *r. 1.*] All applications to commit to prison under section 5 shall in the

first instance be made by summons before a judge, which shall specify the date and other particulars of the judgment or order for non-payment of which the application is made, together with the amount due, and be indorsed with the particulars required by rule 73 of H. T. 1853.

The following is the form of summons issued in accordance with this rule, and should be entitled in the christian and surname of the judgment creditor and debtor. Summons.

It calls upon the judgment debtor to show cause why he should not, for default in payment of the debt hereinafter mentioned, be committed to prison for the term of six weeks from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount of a judgment of the Division of the High Court of Justice, bearing date the day of , together with interest thereon at £4 per cent. per annum from date of such judgment, and £ [£1:6s. 8d. is the amount usually asked for, but in special cases more may be allowed] for costs of the order to be made hereon and sheriff's fees for the execution hereof. And why the sheriff of should not take the said judgment debtor for the purpose aforesaid, if he shall be found within his bailiwick.

Or, if for default in payment of an instalment, to show cause why the said judgment debtor should not for default in payment of £ , being the amount of the instalment of the judgment debt in this action directed to be paid pursuant to the order of the Honorable Mr. Justice , bearing date, &c., be committed to prison for the term of six weeks from the date of his arrest, including the day of such date, or until he shall pay the said instalment of £ , together with £ , the costs of the order to be made herein, and sheriff's fees, &c. And why the sheriff, &c. For non-payment of instalment.

Each of these summonses must be endorsed with the particulars required by rule 73, H. T. 1853. Summons must be endorsed.

Rule 73, H. T. 1853. The name and place of abode or office of business of the attorney actually suing out the same,

and in case such attorney shall not be an attorney of the court in which the same is sued out, then also with the name and place of abode or office of business of the attorney of such court in whose name such writ shall be taken out; and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be indorsed upon the said writ; and in case no attorney shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued by the plaintiff or defendant in person, as the case may be, mentioning the city, town or parish, and also the name of the hamlet, street, and number of the house of such plaintiff or defendant's residence, if any such there be.

Service to be personal if practicable.

R. G. M. T. 1869, *r. 2.*] The service of the summons, whenever it may be practicable, shall be personal; but if it appear to the judge that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected, upon such terms as to the judge may seem fit.

The efforts made must be shown by affidavit, and three attempts at service will generally be required. (See as to substituted service of writ, p. 37).

Upon the hearing of the summons.

Proof of means.

R. G. M. T. 1869, *r. 3.*] Proof of the means of the debtor shall, whenever practicable, be given by affidavit; but if it appear to the judge, either before or at the hearing, that a *vivâ voce* examination, either of the debtor or of any other person, or the production of any document, is necessary or expedient, an order

may be made commanding the attendance of any such person before the judge, at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question [or], and for the production of any such document, subject to such terms and conditions as to the judge may seem fit. The disobedience to any such order shall be deemed a contempt of court, and punishable accordingly.

If it is sought to obtain an order upon an affidavit of service and attendance, an affidavit of defendant's means must still be used.

Order on affidavit of service.

If the judgment creditor is unable to give proof of the defendant's means, the defendant will be ordered to attend and be examined upon oath as to his means.

Defendant may be ordered to attend.

The order made in the first instance is generally for payment by instalments, varying in amount according to the circumstances. It is rarely that an order for committal is granted in the first instance; it is, as a general rule, only granted in default of payment of an instalment under an order. Orders by consent are not drawn up without being initialed by the judge, and the defendant must be in attendance in case the judge should require to be satisfied that he understands the nature of the consent he has given. Neither are orders granted conditionally; as, for instance, unless defendant pays an instalment, he will be committed. They are, however, granted, and ordered not to be drawn up for a given number of days to enable the defendant to pay. In such cases the order of committal is not drawn up until after the expiration of the time ordered.

Order for payment by instalments.

Orders by consent.

R. G. M. T. 1869, *r.* 4.] The order of committal (which may be in the Form A. in the schedule, or to the like effect) shall, before delivery to the sheriff, be indorsed by the par-

particulars required by rule 73 of H. T. 1853 (*p.* 161). Concurrent orders may be issued for execution in different counties. The sheriff and officer shall be entitled to the same fees in respect thereof as are now payable upon a *ca. sa.*

FORM A. IN THE SCHEDULE.

Order of committal.

Upon hearing [*christian and surname of the debtor and of the party claiming, to be inserted.*] I do order that the said A. B. be, for default in payment of the debt herein-after mentioned, committed to prison for the term of [six] weeks from the date of his arrest, including the day of such date, or until he shall pay £ , being the amount of [an instalment due to the said C. D. upon, or a judgment of the court of , or an order made by], bearing date the day of , together with £ for costs of this order and sheriff's fees for the execution hereof. And I order that the sheriff of [Middlesex] do take the said A. B. for the purpose aforesaid, if he shall be found within his bailiwick.

It has been held that there is no power to commit a defendant to prison more than once in respect of the same instalment, although after a first committal it is proved he has the means of paying the sum in respect of which he still makes default (*Evans v. Wills*, 45 L. J. 420); but the fact of the committal is not a discharge of the debt.

R. G. M. T. 1869, *r.* 5.] Upon payment of the sum or sums mentioned in the order (including the sheriffs' fees in like manner as upon a *ca. sa.*), the debtor shall be entitled to a certificate in the Form B. in the schedule, or to the like effect, signed by the attorney in the cause of the creditor, or signed by the creditor, and attested by an attorney on his behalf, or a justice of the peace.

FORM B.

I certify that A. B., now in the gaol of upon an order Certificate of
of the honourable Mr. Justice , at the suit of C. D., for satisfaction.
nonpayment of a debt of pounds, has satisfied the said
debt, together with the costs mentioned in the said order and
sheriff's fees.

Dated &c.

E. F. of, &c.

Attorney for the said C. D.

or

Witness to the signature }
of C. D. C. D. of, &c.

G. H., &c., of , his attorney.

or

J. K., justice of the peace for .

Upon production of this certificate the defendant is entitled to his discharge.

To hold to Bail.

Judge.

32 & 33 Vict. c. 62, s. 6.] After the commencement of this act a person shall not be arrested upon mesne process in any action.

Where the plaintiff in any action in any of her Majesty's superior courts of law at Westminster, in which, if brought before the commencement of this act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the

amount claimed in the action, that he will not go out of England without leave of the court.

Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

Application to
be ex parte.

R. G. M. T. 1869, *r.* 6.] Orders to arrest under the 6th section (above) (which may be in the Form C. in the schedule, or to the like effect), shall be made upon affidavit and ex parte, but the defendant shall be at liberty, at any time after the arrest, to apply to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just. Such orders shall, before delivery to the sheriff, be indorsed with the particulars required by rule 73 of *H. T.* 1853 (*p.* 161). Concurrent orders may be issued for arrest in different counties. The sheriff and officer shall be entitled to the same fees in respect thereof as are now payable upon a *capias*.

Affidavit in
support.

The affidavit used in support of this application must prove—

1. That the plaintiff has a good cause of action against the defendant to the amount of fifty pounds and upwards.

The cause of action must be clearly stated, the mere allegation that plaintiff has a good cause of action is not sufficient.

2. That there is a probable cause for believing that defendant is about to quit England.

If not actual knowledge, the reasons for believing must be shown.

3. That the absence of defendant will materially prejudice the plaintiff in the prosecution of his action.

This has been held to mean that the presence of the defendant is absolutely necessary for the purpose of giving evidence; and repeatedly that the plaintiff must show that he cannot go to trial without the presence of defendant in order to obtain the order to hold him to bail.

That it will be difficult or improbable for plaintiff to realize the fruits of a judgment in the action, if defendant is allowed to leave England, has been held insufficient.

Mr. Justice Lush refused to hold a defendant to bail in an action for breach of promise of marriage, on the ground that the presence of defendant was unnecessary to prove the plaintiff's case.

4. The facts plaintiff requires defendant to prove.

FORM C.

Upon reading the affidavit of _____, I do order that the defendant be arrested and imprisoned for _____ months from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in court the sum of £ _____ by way of security, or give to the plaintiff a bond executed by him (*a*), and two sufficient sureties in the penalty of (*b*), or some other security satisfactory to the plaintiff, that he will not go out of England without the leave of the court [*or that any sum recovered against him in this action shall be paid, or that he shall be rendered to prison*]. And I order that the sheriff of [Middlesex] do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

The following rules scarcely relate to proceedings in chambers, but are inserted here to complete the *Regulæ Generales* of Michaelmas Term, 1869.

(*a*) With leave of a judge there may be more than two sureties.

(*b*) When the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, this must be sufficient to include the probable costs of the action, and the terms must be those in *italics*.

Security.

R. G. M. T. 1869, r. 7.] The security to be given by the defendant may be a deposit in court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or, with leave of a judge, more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, and the form of the proposed bond, give notice that he objects thereto, stating therein in what particulars; and, in case of his so doing, the sufficiency of the security shall be determined by the Master, who shall have power to award the costs of such reference to either party. It shall be the plaintiff's duty to obtain an appointment for that purpose, and unless he does so within four days after giving notice of objection, the security shall be deemed sufficient.

R. G. M. T. 1869, r. 8.] The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the court, or a judge.

R. G. M. T. 1869, r. 9.] Unless otherwise ordered, the costs of and consequent on an order to arrest, shall be costs in the cause.

R. G. M. T. 1869, r. 10.] Upon payment into court of the amount mentioned in the order, a receipt shall be given by the proper officer; and upon receiving the bond, or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's attorney; and the delivery of such receipt or certificate to the sheriff shall entitle the defendant to be discharged out of custody.

R. G. M. T. 1869, r. 11.] The sheriff or other officer named either in an order of committal or an order to arrest under the 6th section shall, within two days after the arrest, indorse on the order the true date of such arrest.

To set aside Proceedings for Irregularity.

Master.

Ord. LIX.] Non-compliance with any of these rules shall not render the proceedings in

any action void unless the court or a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit.

By summons, supported by affidavit of facts.

R. G. H. T. 1853, *r.* 135.] No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

To be made within a reasonable time.

R. G. H. T. 1853, *r.* 136.] Where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated therein.

Summons to contain objections.

R. G. H. T. 1853, *r.* 137.] In all cases where a rule is obtained to show cause why proceedings should not be set aside for irregularity, with costs, and such rule is afterwards discharged generally, without any special direction upon the matter of costs, it is to be understood as discharged with costs.

Costs.

To rectify Omissions or Mistakes in the Register under the Joint Stock Companies Acts.

Master.

By summons entitled "In the Matter of the Joint Stock Companies Act," calling upon the secretary to show cause why the register should not be rectified by, &c., &c.

25 & 26 *Vict. c.* 89, *s.* 35.] If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by

motion in any of her Majesty's superior courts of law or equity, or by application to a judge sitting in chambers, or to the vice-warden of the Stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said courts may direct, apply for an order of the court that the register may be rectified; and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained. The court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by the Common Law Procedure Act, 1854, shall lie.

Leave to sue in Formâ Pauperis.

Ex parte Master.

Leave to sue *in formâ pauperis* is obtained upon petition to the Lord Chief Justice and other judges of the High Court of Justice entitled in the division of the court, and in the cause, and in the following form:—

Contents of
petition.

That the above-named defendant [*or*, if the action be not already commenced, C. D. of] is justly and truly indebted unto your petitioner in the sum of £ , for work and labour, &c. [*or*, as the cause of action may be],

and that your petitioner has commenced an action against him for the same, but is unable [*or*, has not commenced any action against him for the same, being unable] to carry on the said cause on account of his extreme poverty, as appears by the affidavit annexed:—

Your petitioner therefore humbly prays your Lordship that he may be permitted to prosecute his said action against the defendant *in formâ pauperis*, and that , Esq., may be assigned to him as counsel, and , gentleman, as his solicitor, to prosecute the said suit, and your petitioner will ever pray.

To the petition must be annexed an affidavit by the party himself, “that he is not worth £5 in the world except his wearing apparel and the matter in question in the cause.” Affidavit in support.

The opinion of counsel on the case and his consent to act must also be annexed. Consent of counsel.

R. G. H. T. 1853, *r.* 121.] No person shall be permitted to sue *in formâ pauperis* unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the court or judge to whom the application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the masters or associates, or at the judges’ chambers or elsewhere, by reason of a verdict being found for such pauper exceeding five pounds.

Upon these documents an order is drawn up; a copy of which must be served on the opposite party, the original being retained to be produced at the various offices, to warrant a dispensation of the fees.

The order takes effect from the time of its service only. (*Fray v. Voules*, L. R., 3 Q. B. 214.)

For Prisoner to give Evidence.

16 & 17 Vict. c. 30, s. 9, enacts that “It shall be lawful for one of her Majesty’s secretaries of state, or any judge of the Court of Queen’s Bench or Common Pleas, or any baron

of the Exchequer, in any case where he may see fit to do so, upon application by affidavit, to issue a warrant or order under his hand for bringing up any prisoner or person confined in any gaol, prison or place under any sentence or under commitment for trial or otherwise (except under process in any civil action, suit or proceeding), before any court, judge, justice, or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending or to be inquired of, or determined in or before such court, judge, justice or judicature; and the person required by any such warrant or order to be so brought before such court, judge, justice or other judicature shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by any of her Majesty's superior courts of law at Westminster to be brought before such court to be examined as a witness in any cause or matter depending before such court is now by law required to be dealt with."

Affidavit in
support.

Upon affidavit by applicant's solicitor entitled in the action or proceeding, stating—

That A. B., a prisoner in her Majesty's gaol at ,
charged with [*or* undergoing sentence of for
], is a necessary and material witness on the trial
of this action on behalf of the .

The hour and date on which prisoner's attendance is
required.

Under civil
process.

For prisoner under civil process to give evidence, a writ of *habeas corpus ad testificandum* must be obtained, granted upon an ex parte application, supported by affidavit, that prisoner is a material witness.

To admit Prisoner to Bail.

Judge.

In cases where the committing magistrate has refused to admit a prisoner to bail, an application can be made at chambers upon an affidavit of facts, and verifying a copy of the depositions, which must be annexed.

Affidavit.

An order is made that a writ of certiorari directed to the magistrate or coroner to return the depositions on which the prisoner has been committed to the sitting judge at chambers on a certain day, and at the same time a summons is issued calling upon the committing magistrate and the prosecutor to show cause why the prisoner should not be admitted to bail. Order that summons issue.

The magistrate rarely opposes an order upon this summons; its object is simply to intimate to him that such an application is being made, that he may have the opportunity of bringing before the judge facts that may not otherwise appear.

If an order is made, the judge fixes the amount and directs the bail to be taken in the country if necessary. Order.

Bills of Costs.

Master.

The practice relating to bills of costs and their taxation requires a treatment beyond the scope of this work, and it will be sufficient here simply to notice the various summonses issued at the chambers in relation thereto and refer for further information as to detail to the introduction to Lush's Practice, 3rd edition, page 274, where the whole matter is fully discussed.

By 6 & 7 Vict. c. 73, s. 37, a solicitor is precluded from commencing or maintaining an action for the recovery of his fees until the expiration of one month after the delivery of his bill; but by the 38 & 39 Vict. c. 79, power is given to a judge to authorize a solicitor to commence an action for the recovery of his fees, or to tax his bill, before the expiration of the month, where he has probable cause for believing that the party chargeable therewith is about to quit England, or to become a bankrupt, or a liquidating or compounding debtor, or to take any other steps, or do any other act, which, in the opinion of the judge, would tend to defeat or delay such solicitor in obtaining payment.

Application
for delivery of
the bill.

An application for the delivery of the bill should be made in the division where the proceedings, the subject of the bill, have been taken and should be entitled "In the matter of the Solicitor."

Order.

The order directs the bill to be delivered within a certain time, and that credit be given for all sums of money received of or on account of the party chargeable.

Within one month after the delivery of the bill, upon the application of the party chargeable, by summons, the bill will be ordered to be taxed in the following terms:—

"That A. B.'s bill of fees, charges, and disbursements, in the causes and matters delivered to C. D., be referred to the Master to be taxed; and that the said A. B. give credit for all sums of money by him received from, or on account of the said C. D., and that the said A. B. do refund what (if anything) he may, on such taxation, appear to have been overpaid.

"And further, that the Master do tax the costs of such reference, and certify what shall be found due to or from either party in respect of such bill and demand, and of the costs of such reference, to be paid according to the event of such taxation, pursuant to the statute; and that the said A. B. be restrained from commencing or prosecuting any action or suit, touching such demand, pending such reference.

"And further, that upon payment by the said C. D. of what (if anything) may appear to be due to the said A. B., the said A. B. do deliver to the said C. D., or to his solicitor, all deeds, books, papers, and writings in his possession, custody, or power, belonging to the said C. D."

If no such application is made by the party chargeable within the time, the solicitor can apply, when a similar order will be made.

If the solicitor commence an action for the recovery of the amount of his bill before it has been taxed, unless authorized to do so in pursuance of the 38 & 39 Vict. c. 79, upon the application of the party chargeable an order will be made ordering taxation, and restraining the prosecution of the action pending the taxation; and further, that upon payment of the amount found to be due all proceedings in the action be stayed.

Attention is directed to the following special allowances of August, 1875.

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing-masters, registrars, or other officers of any of the courts whose jurisdiction is by the act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocators, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the court or a judge.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in conse-

quence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

28. The rules, orders, and practice of any court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of

costs, existing prior to the commencement of the act, shall, in so far as they are not inconsistent with the act, and the rules of court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

30. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item

or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

31. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Reviewing Taxation.

Judge.

Summons.

Upon the taxation, if either party be dissatisfied with the decision of the Master, an application can be made by summons to show cause why the taxation should not be reviewed.

Special Allowance, August 12, 1875, r. 32.
Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as to the judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which

shall not have been objected to in manner aforesaid.

Special Allowance, August 12, 1875, r. 33.
Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct.

It must be supported by an affidavit, that the Master has given his allocatur or certificate, for until then the taxation cannot be considered as finished. A judge will not interfere with the discretion of the Master as to any question of amount. He will review his decision only, when he has proceeded on a wrong principle.

APPENDIX.

THE SUPREME COURT OF JUDICATURE ACTS.

N.B.—Of those sections which are of no practical utility, the subject-matter only is given.

36 & 37 VICT. c. 66.

An Act for the Constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorize the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council. [5th August, 1873.]

Whereas it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England:

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of her Majesty's Privy Council:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This act may be cited for all purposes as the Short title. "Supreme Court of Judicature Act, 1873."

2. Commencement of act. Repealed by 37 & 38 Vict. c. 83, and by section 2, the provisions of this act are to come into operation on the first day of November, 1875.

PART I.

Constitution and Judges of Supreme Court.

3. Union of existing courts into one Supreme Court.

So much of this section as relates to the London Court of Bankruptcy is repealed.

4. Division of Supreme Court into a court of original and a court of Appellate Jurisdiction.

5. Constitution of High Court of Justice.

6. Repealed.

7. Vacancies by resignation of judges and effect of vacancies generally.

8. Qualifications of judges. Not required to be serjeants at law.

9. Repealed.

10. Repealed.

11. Saving of rights and obligations of existing judges.

12. Provisions for extraordinary duties of judges of the former courts.

13. Salaries of future judges. So much of this section as relates to additional judges of the Court of Appeal is repealed.

14. Retiring pensions of future judges of High Court of Justice, and ordinary judges of Court of Appeal.

15. Salaries and pensions how to be paid.

PART II.

Jurisdiction and Law.

Jurisdiction of
High Court of
Justice.

16. The High Court of Justice shall be a superior court of record, and, subject as in this act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by, all or any of the courts following; (that is to say,)

(1.) The High Court of Chancery, as a common law court as well as a court of equity, including the jurisdiction of the master of the rolls, as a

judge or master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a common law court;

- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;
- (8.) *The London Court of Bankruptcy; (Repealed.)*
- (9.) The Court of Common Pleas at Lancaster;
- (10.) The Court of Pleas at Durham;
- (11.) The courts created by commissions of assize, of oyer and terminer, and of gaol delivery, or any of such commissions:

The jurisdiction by this act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this act,— Jurisdiction not transferred to High Court.

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same court sitting as a Court of Appeal in Bankruptcy;
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the county palatine of Lancaster;
- (3.) Any jurisdiction usually vested in the lord chancellor or in the lords justices of appeal in chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics and persons of unsound mind;
- (4.) Any jurisdiction vested in the lord chancellor in relation to grants of letters patent, or the issue of commissions or other writings, to be passed under the great seal of the United Kingdom:

- (5.) Any jurisdiction exercised by the lord chancellor in right of or on behalf of her Majesty as visitor of any college, or of any charitable or other foundation:
- (6.) Any jurisdiction of the master of the rolls in relation to records in London or elsewhere in England.

Jurisdiction
transferred to
Court of
Appeal.

18. The Court of Appeal established by this act shall be a superior court of record, and there shall be transferred to and vested in such court all jurisdiction and powers of the courts following; (that is to say.)

- (1.) All jurisdiction and powers of the lord chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same court as a Court of Appeal in Bankruptcy:
- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the lords justices of appeal in chancery as a judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said lord warden when sitting in his capacity of judge:
- (4.) All jurisdiction and powers of the Court of Exchequer Chamber:
- (5.) All jurisdiction vested in or capable of being exercised by her Majesty in council, or the judicial committee of her Majesty's privy council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the lord chancellor, or any other person having jurisdiction in lunacy.

Appeals from
High Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this act,

and to such rules and orders of court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this act, the said Court of Appeal shall have all the power, authority and jurisdiction by this act vested in the High Court of Justice.

20 & 21. Repealed by 39 & 40 Vict. c. 59, s. 24.

22. Transfer of pending business.

23. The jurisdiction by this act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this act, or by such rules and orders of court as may be made pursuant to this act; and where no special provision is contained in this act or in any such rules or orders of court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts. Rules as to exercise of jurisdiction.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:— Law and equity to be concurrently administered.

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a court of equity, the said courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given

by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this act.

- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said courts respectively, and every judge thereof, shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of this act.
- (3.) See page 69.
- (4.) The said courts respectively, and every judge thereof, shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this act.
- (5.) See page 131.
- (6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this act, the said courts respectively, and every judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner

as the same would have been recognized and given effect to if this act had not passed by any of the courts whose jurisdiction is hereby transferred to the said High Court of Justice.

- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

25. And whereas it is expedient to take occasion of the union of the several courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

Rules of law upon certain points.

By sect. 10 of the Amending Act of 1875:—

38 & 39 Vict.
c. 77, s. 10.

- (1.) *Sub-section one of clause twenty-five of the principal act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) in the administration by the court of the assets of any person who may die after the commencement of this act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to*

the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this act.

Statutes of limitation in-applicable to express trusts.

- (2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Equitable wastes.

- (3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

- (4.) There shall not, after the commencement of this act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

- (5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debts and

- (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by

way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the acts for the relief of trustees.

- (7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this act have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity.

Stipulations
not of the
essence of
contracts.

The reference to the passing of the principal act shall be deemed to refer to the date of the commencement of the principal act. Sect. 10 of Act, 1875.

- (8.) See page 133.
- (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance

Injunctions
and receivers.
Damages by
collision at sea.

- with the rules in force in the courts of common law, shall prevail.
- Infants. (10.) In questions relating to the custody and education of infants the rules of equity shall prevail.
- Cases of conflict not enumerated. (11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

PART III.

Sittings and Distribution of Business.

26. Abolition of Terms.

27. Vacations.

Sittings in vacation.

28. Provision shall be made by rules of court for the hearing, in London or Middlesex, during vacation by judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of judges of High Court on circuit.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by her Majesty shall be of the same validity as if it were enacted in the body of this act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this act, be deemed to constitute a court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly

of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

30. Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a court of the said High Court of Justice.

Sittings for trial by jury in London and Middlesex.

31. Divisions of the High Court of Justice.

32. Power to alter divisions by order in council.

33. See page 117.

34. See page 118.

35. Repealed.

36. See page 122.

37. Sittings in London and Middlesex and on circuits.

38. Rota of judges for election petitions.

39. See page 2.

40. Such causes and matters as are not proper to be heard by a single judge shall be heard by divisional courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such divisional courts may sit at the same time. A divi-

Divisional courts of the High Court of Justice.

sional court of the said High Court of Justice shall be constituted by two or three, and no more, of the judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such judges. Every judge of the said High Court shall be qualified and empowered to sit in any of such divisional courts. The president of every such divisional court of the High Court of Justice shall be the senior judge of those present, according to the order of their precedence under this act.

Divisional
courts for
business of
Queen's Bench,
Common Pleas,
and Exchequer
Divisions.

41. Subject to any rules of court, and in the meantime until such rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the superior courts of common law, would have been proper to be transacted or disposed of by the court sitting in banc, if this act had not passed, may be transacted and disposed of by divisional courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular division of the said court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other divisional court, to take part, if required, in the sittings of such divisional courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any divisional courts of the said High Court of Justice for any other purpose authorized by this act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas and Exchequer Divisions respectively, which ought to be transacted by one or more judges not sitting in a divisional court, shall be made from time to time under the direction and superintendence of the judges of the said High Court; and in case of difference among them, in such

manner as a majority of the said judges, with the concurrence of the lord chief justice of England, shall determine.

42. Subject to any rules of court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement of this act; and every cause or matter which after the commencement of this act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit; provided that (subject to any rules of court, and to the power of transfer, and to the provisions of this act as to the trial of questions or issues by commissioners, or in Middlesex or London), all causes and matters which, if this act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present judge of the said Admiralty Court during his continuance in office as a judge of the High Court.

Distribution of business among the judges of the Chancery, and Probate, Divorce, and Admiralty Divisions of the High Court.

43. Divisional courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the judge, to whom such business is assigned, with the concurrence of the president of the same division, deems proper to be heard by a divisional court.

Divisional courts for business of the Chancery Division.

44. Divisional courts may be held for the transaction of any part of the business assigned to the Probate, Divorce and Admiralty Division of the said High Court, which the judges of such division, with the concurrence

Divisional courts for business belonging to the division.

of the president of the said High Court, deem proper to be heard by a divisional court. Any cause or matter assigned to the said Probate, Divorce and Admiralty Division may be heard at the request of the president of such division, with the concurrence of the president of the said High Court, by any other judge of the said High Court.

Appeals from inferior courts to be determined by divisional courts.

45. All appeals from petty or quarter sessions, from a county court, or from any other inferior court, which might before the passing of this act have been brought to any court or judge whose jurisdiction is by this act transferred to the High Court of Justice, may be heard and determined by divisional courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to rules of court, or (subject to rules of court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such divisional courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the divisional court by which any such appeal from an inferior court shall have been heard.

Cases and points may be reserved for or directed to be argued before divisional courts.

46. Subject to any rules of court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case, or point in a case, to be argued before a divisional court; and any divisional court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the justices of either bench and the barons of the exchequer by the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any act amending the same, shall and may be exercised after the commencement of this act by the judges of the High Court of Justice, or five of them at the least, of whom the lord chief justice of

England, the lord chief justice of the Common Pleas, and the lord chief baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said act of the eleventh and twelfth years of her Majesty's reign.

48. Repealed.

49. See page 3.

50. See page 3.

51. Provision for absence or vacancy in the office of a judge.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a divisional court thereof. Power of a single judge in Court of Appeal.

53. Repealed.

54. Judges not to sit on appeal from their own judgments.

55. Repealed by 39 & 40 Vict. c. 59, s. 24.

PART IV.

Trial and Procedure.

56. Subject to any rules of court and to such right References as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the court or by and assessors.

any divisional court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the court, and may (if so adopted) be enforced as a judgment by the court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the court.

57. See page 111.

58. Power of referees and effect of their findings.

59. See page 110.

60. See page 14.

61. See page 17.

62. See page 17.

63. Repealed.

64. See page 18.

65. See page 18.

66. See page 19.

67. See page 127.

68—74. Repealed.

75. Councils of judges to consider procedure and administration of justice.

76. Acts of parliament relating to former courts to be read as applying to courts under this act.

PART V.

Officers and Offices.

77. Transfer of existing staff of officers to Supreme Court.

Officers of
Courts of
Pleas at Lan-
caster and
Durham.

78. The existing Queen's counsel of the county palatine of Lancaster shall for the future have the same precedence in the county, and the existing prothonotaries and district prothonotaries, and other

officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham respectively, and their successors, shall (subject to rules of court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those courts respectively at the commencement of this act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice, in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at Durham respectively, as at the commencement of this act may lawfully be performed and exercised by them respectively under any acts of parliament for the time being in force with respect to the said last-mentioned courts respectively, or under any other authority; and all powers in respect of any such prothonotaries, district prothonotaries, or other officers of the Court of Common Pleas at Lancaster, which at the commencement of this act may be vested by law in the chancellor of the duchy and county palatine of Lancaster, under any such act of parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this act by the lord chancellor; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such prothonotaries, district prothonotaries or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such act as aforesaid or otherwise by law may be vested in the chancellor of the duchy and county palatine of Lancaster, with the concurrence of any judges or judge, or in any other authority, shall be exercised after the commencement of this act in the manner hereby provided with respect to rules of court to be made under this act, and (in all cases in which the sanction of the Treasury is now required) with the sanction of the Treasury; and all provisions made by any such acts as aforesaid, or otherwise for or with respect to the remuneration of any such prothonotaries, district prothonotaries or other officers as aforesaid, shall remain and be in full force and effect until the

same shall be altered under the provisions of this act, or otherwise by lawful authority.

79. Personal officers of future judges.

80. Provisions as to officers paid out of fees.

81. Doubts as to the status of officers to be determined by rule.

Powers of commissioners to administer oaths.

82. Every person who at the commencement of this act shall be authorized to administer oaths in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

Official referees to be appointed.

83. There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such questions as shall under the provisions of this act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the lord chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the lord chief justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties entrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court, or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by parliament.

84. Duties, appointment and removal of officers of Supreme Court.

85. Salaries and pensions of officers.

86. Patronage not otherwise provided for.

Solicitors and attorneys.

87. From and after the commencement of this act all persons admitted as solicitors, attorneys or proctors of or by law empowered to practise in any court, the jurisdiction of which is hereby transferred to the High Court

of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this act had not passed; and all persons who from time to time, if this act had not passed, would have been entitled to be admitted as solicitors, attorneys or proctors of or been by law empowered to practise in any such courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the master of the rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this act had not passed.

Any solicitors, attorneys or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of her Majesty's superior courts of law or equity might previously to the passing of this act have exercised in respect of any solicitor or attorney admitted to practise therein.

PART VI.

Jurisdiction of Inferior Courts.

88. It shall be lawful for her Majesty from time to time by order in council to confer on any inferior court of civil jurisdiction, the same jurisdiction in equity and in admiralty, respectively, as any county court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this act directed.

Power by order in council to confer jurisdiction on inferior courts.

89. Every inferior court which now has or which may after the passing of this act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court, such relief, distress or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in

Powers of inferior courts having equity and admiralty jurisdiction.

as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

90. See page 131.

Rules of law
to apply to
inferior courts.

91. The several rules of law enacted and declared by this act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts.

PART VII.

Miscellaneous Provisions.

Transfer of
books and
papers to
Supreme
Court.

92. All books, documents, papers and chattels in the possession of any court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

93. Saving as to circuits, &c.

94. Saving as to lord chancellor.

95. Saving as to chancellor of Lancaster.

96. Saving as to chancellor of exchequer and sheriffs.

97. Saving as to lord treasurer and office of the receipt of exchequer.

98. Provisions as to great seal being in commission.

99. Provision as to commissions in counties palatine.

Interpretation
of terms.

100. In the construction of this act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following (that is to say):

“Lord chancellor” shall include lord keeper of the great seal.

- "The High Court of Chancery" shall include the lord chancellor.
- "The Court of Appeal in Chancery" shall include the lord chancellor as a judge on rehearing or appeal.
- "London Court of Bankruptcy" shall include the chief judge in bankruptcy.
- "The Treasury" shall mean the commissioners of her Majesty's treasury for the time being, or any two of them.
- "Rules of court" shall include forms.
- "Cause" shall include any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the crown.
- "Suit" shall include action.
- "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the crown.
- "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise.
- "Petitioner" shall include every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant.
- "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.
- "Party" shall include every person served with notice of, or attending any proceeding, although not named on the record.
- "Matter" shall include every proceeding in the court not in a cause.
- "Pleading" shall include any petition or summons and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.
- "Judgment" shall include decree.
- "Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in criminal trials as are mentioned in the act of the eleventh and twelfth years of her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this act.

The SCHEDULES to this act are repealed.

38 & 39 VICT. c. 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873. [11th August, 1875.]

Whereas it is expedient to amend and extend the Supreme Court of Judicature Act, 1873:

Be it therefore enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. This act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this act referred to as the principal act), and together with the principal act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this act may be cited separately as the Supreme Court of Judicature Act, 1875.

Short title, and construction with 36 & 37 Vict. c. 66.

2. Commencement of act.

3. Explanation of 36 & 37 Vict. c. 66, s. 5, as to number of judges.

4. Constitution of Court of Appeal.

5. Tenure of office of judges and oaths of office. Judges not to sit in the House of Commons.

6. Precedence of judges.

7. Any jurisdiction usually vested in the lords justices of appeal in chancery or either of them, in relation to the persons and estates of idiots, lunatics and persons of unsound mind, shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of her Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the lords justices as so intrusted shall be construed as if such judge or judges so intrusted had been named therein instead of such lords justices: Provided that each of the persons who may at the commencement of the principal act be lords justices of appeal in chancery shall, during such time as he continues to be a judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

Jurisdiction of lords justices in respect of lunatics.

8. Admiralty judges and registrar.

9. London Court of Bankruptcy not to be transferred to High Court of Justice.

10. See page 187.

11. See page 121 ; sub-sect. 2, page 123.

(3.) Subject to rules of court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this act had not passed.

Sittings of
Court of
Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree or judgment, be heard before not less than two judges of the said court sitting together.

Any doubt which may arise as to what decrees, orders or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

13. See page 15.

14. Amendment of 36 & 37 Vict. c. 66, s. 87, as to enactments relating to attorneys.

Appeal from
inferior court
of record.

15. It shall be lawful for her Majesty from time to time, by order in council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

Rules in first
schedule in
substitution
for 36 & 37
Vict. c. 66,
s. 69, and
Schedule.

16. The rules of court in the first schedule to this act shall come into operation at the commencement of this act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such rules of court, and also all such other rules of court (if any) as may be made after the passing and before the com-

mencement of this act under the authority of the next section, may be annulled or altered by the authority by which new rules of court may be made after the commencement of this act.

17. Her Majesty may at any time after the passing and before the commencement of this act, by order in council, made upon the recommendation of the lord chancellor, and the lord chief justice of England, the master of the rolls, the lord chief justice of the Common Pleas, the lord chief baron of the Exchequer, and the lords justices of Appeal in Chancery, or any five of them, and the other judges of the several courts intended to be united and consolidated by the principal act as amended by this act, or of a majority of such other judges, make any further or additional rules of court for carrying the principal act and this act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the first schedule to this act; that is to say,

- (1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any divisional or other courts thereof respectively, and of the judges of the said High Court sitting in chambers; and,
- (2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and
- (3.) Generally, for regulating any matters relating to the practice and procedure of the said courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

From and after the commencement of this act, the Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting for that purpose held (of which majority the lord chancellor shall be one), alter and annul any rules of court for the time being in force, and have and exercise the same power of making rules of court as is by this section vested in her Majesty in council on the recommendation of the said judges before the commencement of this act.

All rules of court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this act provided.

Provision as to making, &c. of rules of court before or after the commencement of the act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and Schedule.

In substitution for 36 & 37 Vict. c. 66, s. 74.

All rules of court made in pursuance of this section, if made before the commencement of this act, shall from and after the commencement of this act, and if made after the commencement of this act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain judges in section twenty-seven of the principal act shall be deemed to refer to the judges mentioned in this section as the judges on whose recommendation an order in council may be made.

Provision as to rules of Probate, Divorce, and Admiralty Courts, being rules of the High Court,—in substitution for 36 & 37 Vict. c. 66, s. 70.

18. All rules and orders of court in force at the time of the commencement of this act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the chief judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the first schedule hereto or by rules of court made by order in council before the commencement of this act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any rules of court made after the commencement of this act.

The present judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

Provision as to criminal procedure, subject to future rules remaining unaltered,—in substitution

19. Subject to the first schedule hereto and any rules of court to be made under this act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to crown cases reserved, shall be

the same as the practice and procedure in similar causes and matters before the commencement of this act.

for 36 & 37
Vict. c. 66,
s. 71.

20. Nothing in this act or in the first schedule hereto, or in any rules of court to be made under this act, save as far as relates to the power of the court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Provision as to act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 72.

21. Save as by the principal act or this act, or by any rules of court, may be otherwise provided, all forms and methods of procedure which at the commencement of this act were in force in any of the courts whose jurisdiction is by the principal act or this act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal act or this act or with any rules of court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal act and this act had not passed.

Provision for saving of existing procedure of courts when not inconsistent with this act or rules of court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

22. Whereas by section forty-six of the principal act, it is enacted that “any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a divisional court, may reserve any case, or any point in a case, for the consideration of a divisional court, or may direct any case or point in a case to be argued before a divisional court:” Be it hereby enacted, that nothing in the said act, nor in any rule or order made under the powers thereof or of this act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Nothing in principal act to prejudice right to have issues submitted, &c.

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by

motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

23. Regulation of circuits.

Additional power as to regulation of practice and procedure by rules of court.

24. Where any provisions in respect of the practice or procedure of any courts the jurisdiction of which is transferred by the principal act or this act to the High Court of Justice or the Court of Appeal, are contained in any act of parliament, rules of court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the lord chancellor, with the concurrence of the treasury, to make any rules with respect to the paymaster-general, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The lord chancellor, with the concurrence of the treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this act, is to be carried, and modify all or any forms relating to such accounts; and the governor and company of the bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the lord chancellor, with the concurrence of the treasury, for the purpose of carrying into effect any such order.

25. Orders and rules to be laid before parliament and may be annulled on address from either House.

Fixing and collection of fees in High Court and Court of Appeal.

26. The lord chancellor, with the advice and consent of the judges of the Supreme Court or any three of them, and with the concurrence of the treasury, may, either before or after the commencement of this act, by order, fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any court created by any commission or in any office which is connected with any of those courts, or in which any business connected with any of those courts is conducted, or by any

officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages, and appoint new fees and per-centages to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers, in the same manner as if it had been enacted by parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed:

- (1.) The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the treasury from time to time direct.
- (3.) The treasury, with the concurrence of the lord chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.
- (4.) Any document which ought to bear a stamp in pursuance of this act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps; but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the lord chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.
- (5.) The commissioners of inland revenue shall keep

such separate account of all money received in respect of stamps under this act as the treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those commissioners in the execution of this section, the money so received shall, under the direction of the treasury, be carried to and form part of the consolidated fund.

- (6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken, applied and accounted for in the existing manner.

27. Provisions as to Lancaster Fee Fund and salaries, &c. of officers of courts of Lancaster and Durham, 32 & 33 Vict. c. 37.

28. Annual account of fees and expenditure.

29. Amendment of law as to payments to senior puisne judge of Queen's Bench and Queen's coroner.

30. Amendment of 35 & 36 Vict. c. 44, as to transfer of Government securities to and from the paymaster-general on behalf of the Court of Chancery and the national debt commissioners.

31. Abolition of secretary to the visitors of lunatics, 16 & 17 Vict. c. 70.

32. Amendment of 32 & 33 Vict. c. 83, s. 19, and 32 & 33 Vict. c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.

33. Repeal.

34. As to vacancies in any office within sect. 77 of the principal act.

35. Amendment of principal act, sect. 79, as to chamber clerks.

RULES OF THE SUPREME COURT.

[NOTE.—Where no other provision is made by the Act or these Rules, the present procedure and practice remain in force.]

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

2. See page 151.

3. All other proceedings in and applications to the High Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if the act had not been passed.

ORDER II.

WRIT OF SUMMONS AND PROCEDURE, ETC.

1. See page 44.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the court shall otherwise direct.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in Form No. 1 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

3a. (*Rule 2 of June, 1876.*) Forms 2 and 3 in Part 1

of Appendix (A) to "The Rules of the Supreme Court" shall be read as if the words "by leave of the court or a judge" were not therein.

4. See page 39.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in Form No. 2 in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.

6. See page 49.

7. The writ of summons in every admiralty action in rem shall be in Form No. 4 of Part I. of Appendix (A) hereto, with such variations as circumstances may require.

7a. (*Rule 2 of December, 1875.*) Form A. in the Appendix to these rules shall be substituted for the form referred to in Order II., rule 7, of "The Rules of the Supreme Court."

8. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the lord chancellor, or if the office of lord chancellor shall be vacant, in the name of the lord chief justice of England.

ORDER III.

INDORSEMENTS OF CLAIM.

1. See page 44.

2. See page 45.

3. The indorsement of claim may be to the effect of such of the forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A) hereto, Part II., sect. VIII., or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

5. In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

6. See page 51.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in

respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., sect. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

ORDER IV.

INDORSEMENT OF ADDRESS.

1. See page 7.
 2. See page 8.
 3. Annulled; *and in lieu thereof, Rule 3 of February, 1876.*
- See page 20.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

1. *Place of Abode.*

1. See page 20.
2. See page 21.
3. See page 21.

2. *Option to choose Division in certain cases.*

4. See page 122.

3. *Generally.*

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed in the case of proceedings directed to be printed.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the

solicitor leaving the same, or by the plaintiff himself if he sues in person.

8. (*As amended by Rule 3 of June, 1876.*) The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books have heretofore been kept by the clerks of records and writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter and a number, in the manner in which causes are now distinguished in such last-mentioned cause books. And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry.

9. Notice to the proper officer of the assignment of an action to any division of the court under sect. 11 of the Supreme Court of Judicature Act, 1875, or under rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

4. *In particular Actions.*

10. The issue of a writ of summons in probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

11. (*As amended by Rule 3 of December, 1875, and further amended by Rule 4 of February, 1876.*) In admiralty actions in rem a warrant for the arrest of property according to the Form A. in the Appendix to these rules may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:

(a.) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

(b.) In an action of wages the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the action has been given to the consul of the state to which the vessel belongs, if there be one resident in London [*a copy of the notice shall be annexed to the affidavit*].

(c.) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

(d.) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same.

(e.) The court or judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

12. Annulled (*by Rule 4 of December, 1875*).

ORDER VI.

CONCURRENT WRITS.

1. See page 47.
2. See page 43.

ORDER VII.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. See page 48.
2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

ORDER VIII.

RENEWAL OF WRIT.

1. See page 45.
2. The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

1. See page 37.

2. *On particular Defendants.*

2. See page 37.

3. See page 38.

4. See page 38.

5. See page 39.

3. *On Partners and other Bodies.*

6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to the rules hereinafter contained, such service shall be deemed good service upon the firm.

6a.- (*Rule 4 of June, 1876.*) Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and, subject to any of the rules of the Supreme Court, such service shall be deemed good service on the person so sued.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

4. *In particular Actions.*

8. See page 58.

9. (*Rule 5 of December, 1875.*) In admiralty actions in rem the warrant of arrest shall be served by the marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the registry.

10. (*Rule 6 of December, 1875.*) In admiralty actions in rem, service of a writ of summons against ship, freight, or

cargo on board, is to be effected by nailing or affixing the original writ for a short time on the mainmast, or on the single mast of the vessel, and on taking off the process, leaving a true copy of it nailed or fixed in its place.

11. If the cargo has been landed or transshipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

Generally.

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default.

ORDER X.

SUBSTITUTED SERVICE.

See page 37.

ORDER XI.

SERVICE OUT OF THE JURISDICTION.

1. See page 39.
- 1a. (*Rule 5 of June, 1876.*) See page 40.
2. See page 41.
3. See page 41.
4. See page 42.
5. See page 43.

ORDER XII.

APPEARANCE.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.
2. See page 22.
3. See page 22.
4. See page 22.
5. See page 22.
6. (*As substituted by Rule 5 of February, 1876.*) See page 23.
7. See page 8.
8. See page 8.
9. See page 51.

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10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

12a. (*Rule 6 of June, 1876.*) Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the court or a judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

16. In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

17. In an admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry.

18. See page 48.

19. See page 49.

20. See page 49.

21. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence

is not so limited shall be deemed an appearance to defend for the whole.

22. The notice mentioned in the last preceding rule may be in the Form No. 7 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

ORDER XIII.

DEFAULT OF APPEARANCE.

1. See page 61.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance, under any of the following rules of this Order, or under Order XV., rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

3. See page 53.

4. See page 54.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

5a. (*Rule 7 of December, 1875.*) See page 23.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

7. See page 57.

8. See page 58.

9. In actions assigned by the 34th section of the act to the Chancery Division, and in Probate actions, and in all other

actions not by the rules in this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared.

10. Annulled by Rule 8 of December, 1875.

ORDER XIV.

LEAVE TO DEFEND WHERE WRIT SPECIALLY INDORSED.

1. See page 54.
2. See page 55.
3. See page 55.
4. See page 56.
5. See page 56.
6. See page 57.

ORDER XV.

APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

1. In default of appearance to a summons indorsed under Order III., rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the court or a judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by summons; and be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

ORDER XVI.

PARTIES.

1. See page 63.
2. See page 64.
3. See page 63.
4. See page 65.
5. See page 65.
6. See page 66.
7. See page 66.
8. See page 59.
9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or

be sued, or may be authorized by the court to defend in such action, on behalf or for the benefit of all parties so interested.

9a. (*Rule 7 of June, 1876.*) In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the court in the presence of such person or persons shall be binding upon the party or parties or class so represented.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge may direct.

10a. (*Rule 8 of June, 1876.*) Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

11. Subject to the provisions of the act, and these rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 16, shall be in force as to actions in the High Court of Justice.

12. Subject as last aforesaid, in all probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force.

13. See page 62.

14. See page 62.

15. Where a defendant is added, unless otherwise ordered by the court or judge, the plaintiff shall file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the court or judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is

served with the writ of summons or notice or afterwards, within four days after his appearance.

17. See page 70.
18. See page 70.
19. See page 74.
20. See page 74.
21. See page 75.

ORDER XVII.

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

2. See page 75.
3. See page 76.
4. See page 76.
5. See page 76.
6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.
7. The last three preceding rules shall be subject to rule 1 of this Order, and to the rules hereinafter contained.
8. See page 76.
9. See page 77.

ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

See page 60.

ORDER XIX.

PLEADING GENERALLY.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the courts of common law, admiralty, and probate.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the

defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

3. See page 78.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C.) hereto may be used.

5. (*As amended by Rule 9 of June, 1876.*) Every pleading which shall contain less than ten folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which and the judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative,

and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

10. See page 81.

11. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

12. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

13. No plea or defence shall be pleaded in abatement.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim.

15. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

16. See page 82.

17. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim

has been barred by the Statute of Limitations or has been released.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

21. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

26. Wherever it is material to allege notice to any person

of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[*E.g.*—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

29. See page 25.

30. In actions for damage by collision between vessels, unless the court or a judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a preliminary act, which shall be sealed up and shall not be opened until ordered by the court or a judge, and which shall contain a statement of the following particulars:—

(a.) The names of the vessels which came into collision and the names of their masters.

(b.) The time of the collision.

(c.) The place of the collision.

(d.) The direction of the wind.

(e.) The state of the weather.

(f.) The state and force of the tide.

(g.) The course and speed of the vessel when the other was first seen.

(h.) The lights, if any, carried by her.

(i.) The distance and bearing of the other vessel when first seen.

(k.) The lights, if any, of the other vessel which were first seen.

(l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.

(m.) What measures were taken, and when, to avoid the collision.

(n.) The parts of each vessel which first came into contact.

If both solicitors consent, the court or a judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

ORDER XX.

PLEADING MATTERS ARISING PENDING THE ACTION.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

2. See page 81.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in the Form No. 2 in Appendix (B.) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the court or a judge shall, either before or after the delivery of such confession, otherwise order.

ORDER XXI.

STATEMENT OF CLAIM.

1. Subject to rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

(a.) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the court or a judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of

claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the court or a judge.

(c.) Where a plaintiff delivers a statement of claim without being required to do so, the court or a judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

2. In probate actions the plaintiff shall, unless otherwise ordered by the court or a judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

3. In admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the court or a judge shall order him to deliver a further statement. Such notice may be either written or printed or partly written and partly printed, and may be in the Form No. 3 in Appendix (B.) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited then within the time prescribed by rule 1 of this Order.

ORDER XXII.

DEFENCE.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the court or a judge.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may

deliver a defence at any time within eight days after his appearance, unless such time is extended by the court or a judge.

3. See page 57.

4. Where the court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

6. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in the Appendix (B.) hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

9. See page 79.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

11. In probate actions the party opposing a will may, with his defence give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in

respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

ORDER XXIII.

DISCONTINUANCE.

1. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action: Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

2. (*Rule 9 of December, 1875.*) When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

2a. (*Rule 10 of June, 1876.*) A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued.

ORDER XXIV.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have

been delivered, unless the time shall be extended by the court or a judge.

2. See page 81.

3. See page 81.

ORDER XXV.

CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

ORDER XXVI.

ISSUES.

See page 88.

ORDER XXVII.

AMENDMENT OF PLEADINGS.

1. See page 84.

2. See page 84.

3. See page 84.

4. See page 86.

5. See page 86.

6. See page 83.

7. See page 86.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. See page 87.

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

11. (*Rule 6 of February, 1876.*) See page 45.

ORDER XXVIII.

DEMURRER.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause

of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the court as against the party demurring.

2. See page 87.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

5. See page 82.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

7. See page 83.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the court otherwise order, pay to the demurring party the costs of the demurrer.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the court shall otherwise order.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding rule, then (subject to the power of the court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the court shall otherwise direct.

12. Where a demurrer is overruled the court may make such

order and upon such terms as to the court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C.)

ORDER XXIX.

DEFAULT OF PLEADING.

1. See page 90.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

5. When in any such action as in rule 4 mentioned there are several defendants, if one of them make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the court or a judge shall otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in rule 2, the plaintiff may enter

final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in rule 4.

7. In an action for the recovery of land, if the defendant makes default as mentioned in rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in rules 4 or 5.

9. In probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed notwithstanding such default.

10. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the court shall consider the plaintiff to be entitled to.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

14. See page 58.

ORDER XXX.

PAYMENT INTO COURT IN SATISFACTION.

1. See page 89.
2. See page 89.
3. Money paid into court as aforesaid may, unless otherwise ordered by a judge, be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the court.
4. The plaintiff, if payment into court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B.) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

ORDER XXXI.

DISCOVERY AND INSPECTION.

1. See page 91.
2. See page 94.
3. See page 93.
4. See page 93.
5. See page 97.
6. See page 94.
7. (*As amended by Rule 11 of June, 1876.*) See page 95.
8. See page 95.
9. See page 95.
10. See page 96.
11. See page 98.
12. See page 98.
13. See page 99.
14. See page 104.
15. See page 103.
16. See page 103.
17. See page 101.
18. See page 102.
19. See page 102.
20. See page 96.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

ORDER XXXII.

ADMISSIONS.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B.) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

ORDER XXXIII.

INQUIRIES AND ACCOUNTS.

The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may

appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

ORDER XXXIV.

QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

2. See page 105.

3. See page 106.

4. See page 106.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B.) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

ORDER XXXV.

PROCEEDINGS IN DISTRICT REGISTRIES.

1. (*As substituted by Rule 12 of June, 1876.*) See page 24.

2. See page 25.

3. See page 25.

4. See page 25.

5. See page 26.

6. See page 26.

7. See page 27.

8. See page 27.

9. See page 27.

10. See page 27.

11. See page 28.

11*a.* (*Rule 10 of December, 1875.*) See page 28.

12. See page 29.

13. See page 29.

14. See page 30.

15. (*Rule 11 of December, 1875.*) See page 30.

ORDER XXXVI.

TRIAL.

1. See page 107.

2. Actions shall be tried and heard either before a judge or judges, or before a judge sitting with assessors, or before a judge and jury, or before an official or special referee, with or without assessors.

3. Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in rule 2; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a court or judge may allow, to the effect that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried.

4. See page 90.

4a. (*Rule 13 of June, 1876.*) See page 91.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding rules that he desires to have the issues of fact tried before a judge and jury, or in any case within the 57th section of the act, if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the court or a judge for an order to that effect, within four days from the time of the service of the notice of trial, or within such extended time as a court or judge may allow.

6. See page 77.

7 Every trial of any question or issue of fact by a jury shall be held before a single judge, unless such trial be specially ordered to be held before two or more judges.

8. (*As amended by Rule 12 of December, 1875.*) Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for which it is to be entered for trial. It may be in the Form No. 14 in Appendix (B.), with such variations as circumstances may require.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be four days' notice.

10. Notice of trial shall be given before entering the action for trial.

10a. (*Rule 13 of December, 1875.*) Unless within six days after notice of trial is given, the cause shall be entered for trial by one party or the other, the notice of trial shall be no longer in force. This rule is not to apply in any case in which notice of trial has been already given or to trials not in London or Middlesex.

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

13. See page 109.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the action for trial.

15. If notice of trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

16. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial without reference to the division of the High Court to which such actions may be attached.

17. (*As amended by Rule 14, of December, 1875.*) The party entering the action for trial shall deliver to the officer two copies of the whole of the pleadings in the action, for the use of the judge at the trial. Such copies shall be in print, except as to such parts, if any, of the pleadings as are by these rules permitted to be written.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the court or a

judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

21. The judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

22. Upon the trial of an action, the judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge.

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

24. If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15 in Appendix (B.) hereto.

25. If the judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

26. See page 78.

27. See page 78.

28. Trials with assessors shall take place in such manner and upon such terms as the court or a judge shall direct.

29. In any cause the court or a judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

29a. (*Rule 14 of June, 1876.*) See page 114.

29b. (*Rule 15 of June, 1876.*) See page 114.

29c. (*Rule 16 of June, 1876.*) See page 113.

30. See page 112.

31. Subject to any order to be made by the court or judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a judge of the High Court, but not so as to make the tribunal of the referee a public court of justice.

32. Subject to any such order as last aforesaid, the referee shall have the same authority in the conduct of any reference or trial as a judge of the High Court when presiding at any trial before him.

33. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise.

34. See page 112.

ORDER XXXVII.

EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the court or a judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner: Provided that where it appears to the court or judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. See page 31.

3. See page 31.

4. See page 108.

ORDER XXXVIII.

EVIDENCE BY AFFIDAVIT.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a judge in chambers may allow, the plaintiff shall

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file his affidavits and deliver to the defendant or his solicitor a list thereof.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a judge in chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court or a judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

5. The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these rules provided after the close of the pleadings.

ORDER XXXIX.

MOTION FOR NEW TRIAL.

1. A party desirous of obtaining a new trial of any cause tried in the Queen's Bench, Common Pleas, or Exchequer Divisions on which a verdict has been found by a jury, or by a judge without a jury, must apply for the same to a divisional court by motion for an order calling upon the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a

new trial should not be directed. Such motion shall be made within four days after the trial, if the divisional court is then sitting, or within the first four days after the commencement of the sitting of the divisional court next after the trial, or within such extended time as the court or a judge may allow.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the court may give final judgment as to part thereof, and direct a new trial as to the other part only.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

5. An order to show cause shall be a stay of proceedings in the action, unless the court shall order that it shall not be so as to the whole or any part of the action.

ORDER XL.

MOTION FOR JUDGMENT.

1. Except where by the act or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment.

2. Where at the trial of an action the judge or a referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

3. Where at the trial of an action the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

4. Where at the trial of an action before a jury the judge has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the judge having caused the finding to be entered wrongly, with reference to the finding of the jury upon the question or questions submitted to them.

5. Where at the trial of an action the judge or a referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

6. On every motion made under either of the last two preceding rules, the order shall be an order to show cause, and shall be returnable in eight days. The motion shall be made within four days after the trial if the divisional court is then sitting, or within the first four days after the commencement of the sitting of the divisional court next after the trial, or within such extended time as a court or judge may allow.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

8. See page 138.

9. See page 139.

10. Upon a motion for judgment, or for a new trial, the court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

11. See page 139.

ORDER XLI.

ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the

judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in Appendix (D.) hereto may be used, with such variations as circumstances may require.

2. Where any judgment is pronounced by the court or a judge in court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Where under the act or these rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

5. Where by the act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

6. Any judgment of nonsuit, unless the court or a judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the court or a judge shall seem just.

ORDER XLII.

EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any court whose jurisdiction is transferred by the said act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into court may be

enforced by writ of sequestration, or in cases, in which attachment is authorized by law, by attachment.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

4. A judgment for the recovery of any property other than land or money may be enforced:

By writ for delivery of the property:

By writ of attachment:

By writ of sequestration.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

6. In these rules the term "writ of execution" shall include writs of *feri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules of this Order shall be applicable to the case.

7. See page 140.

8. See page 141.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

10. (*As amended by Rule 17 of June, 1876.*) No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E.) hereto may be used, with such variations as circumstances may require.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the

hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F.) hereto may be used, with such variations as circumstances may require.

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias, or one or more writ or writs of elegit, to enforce payment thereof, subject nevertheless as follows :

(a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(b.) The court or judge at the time of giving judgment, or the court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods herein-before prescribed.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal

as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

19. See page 141.

20. Every order of the court or a judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action. .

22. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as may be just.

23. Nothing in any of the rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

ORDER XLIII.

WRITS OF FIERI FACIAS AND ELEGIT.

1. Writs of *fieri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

2. Writs of *venditioni exponas*, *distringas nuper vicecomitem*, *fieri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

ORDER XLIV.

ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.

2. No writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued.

ORDER XLV.

ATTACHMENT OF DEBTS.

1. See page 142.
2. See page 143.
3. See page 144.
4. See page 145.
5. See page 145.
6. See page 146.
7. See page 146.
8. See page 147.
9. See page 147.
10. See page 147.

ORDER XLVI.

CHARGING OF STOCK OR SHARES AND DISTINGAS.

1. See page 148.
2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of distringas pursuant to the statute 5 Vict. c. 8, as heretofore. Such writ to be issued out of any office of the High Court in London, where writs of summons are issued.

ORDER XLVII.

WRIT OF SEQUESTRATION.

Where any person is by any judgment directed to pay money into court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of seques-

tration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

ORDER XLVIII.

WRIT OF POSSESSION.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the superior courts of common law.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

ORDER XLIX.

WRIT OF DELIVERY.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the superior courts of common law.

ORDER L.

CHANGE OF PARTIES BY DEATH, &c.

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite.

2. See page 66.

3. In case of an assignment, creation or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

4. See page 67.

5. See page 68.

6. See page 68.

7. See page 68.

ORDER LI.

TRANSFERS AND CONSOLIDATION.

1. See page 125.
2. See page 117.
- 2a. (*Rule 18 of June, 1876.*) See page 125.
3. See page 125.
4. See page 126.

ORDER LII.

INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &C.

1. See page 137.
2. See page 136.
3. See page 136.
4. See page 134.
5. See page 137.
6. See page 138.

ORDER LIII.

MOTIONS AND OTHER APPLICATIONS.

1. Where by these rules any application is authorized to be made to the court or a judge in an action, such application, if made to a divisional court or to a judge in court, shall be made by motion.

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these rules.

3. Except where by the practice existing at the time of the passing of the said act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the court or judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge may think just; and any party affected by such order may move to set it aside.

4. Unless the court or judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

5. See page 10.
6. See page 11.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

8. See page 44.

ORDER LIV.

APPLICATIONS AT CHAMBERS.

1. Every application at chambers authorized by these rules shall be made in a summary way by summons.

2. See page 4.

2a. (*Rule 19 of June, 1876.*) See page 5.

3. See page 5.

4. See page 5.

5. See page 6.

6. See page 6.

ORDER LV.

COSTS.

1. Subject to the provisions of the act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in courts of equity: Provided, that where any action or issue is tried by a jury; the costs shall follow the event, unless upon application made at the trial for good cause shown the judge before whom such action or issue is tried or the court shall otherwise order.

2. (*Rule 7 of February, 1875.*) In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such time or times, and in such manner and form as the court or a judge shall direct.

ORDER LVI.

NOTICES AND PAPER, &c.

1. All notices required by these rules shall be in writing, unless expressly authorized by a court or judge to be given orally.

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per

mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

3. See page 33.

ORDER LVII.

TIME.

1. See page 36.

2. See page 36.

3. See page 35.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a court or a judge.

5. See page 36.

6. See page 34.

7. (*Rule 8 of February, 1876.*) In admiralty actions the court or a judge shall have power at any stage of the proceedings in such action, upon a motion or summons by either party, calling upon the other party to show cause why the trial of such action should not take place on an early day to be appointed by the court or a judge, to appoint that such trial shall take place on any day or within any time which to the court or judge shall seem fit; and for such purpose the court or judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

ORDER LVIII.

APPEALS.

1. Bills of exceptions and proceedings in error shall be abolished.

2. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

3. The notice of appeal shall be served upon all parties

directly affected by the appeal; and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the court of first instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not

diminish the powers conferred by the act upon the Court of Appeal, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

9. The time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Act, 1862, or any act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under rule 15.

10. Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a judge of the court below or of the Appeal Court may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the court may deem expedient.

12. Where evidence has not been printed in the court below, the court below or a judge thereof, or the Court of Appeal or a judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without

such order shall bear the costs thereof, unless the Court of Appeal or a judge thereof shall otherwise order.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the judge to a jury or assessors, the court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the court appealed from may direct.

17. Wherever under these rules an application may be made either to the court below or to the Court of Appeal, or to a judge of the court below or of the Court of Appeal, it shall be made in the first instance to the court or judge below.

18. Every application to a judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.

19. (*Rule 16 of December, 1875.*) In order to constitute divisional courts for the determination of appeals from inferior courts under section 45 of the Judicature Act, 1873, each division of the High Court of Justice shall, before the 1st of January, 1876, select one of the judges of such division to act until the 1st of January, 1877, and so on before every 1st of January subsequent to the 1st of January, 1876, to act for the twelve months next ensuing.

Any two or more of the judges so selected shall constitute a divisional court for the purpose of the said section.

Any other judge of the High Court of Justice may, by arrangement between himself and any one of the judges so

selected, act for such last-mentioned judge in any particular case or cases, or on any particular day or days.

The judges so elected shall make such arrangements as they shall think fit, as to the manner in which application may be made to them, or any of them, in court or chambers, under the 6th section of 38 & 39 Vict. c. 50, relative to appeals by motion under that act.

ORDER LIX.

EFFECT OF NON-COMPLIANCE.

See page 168.

ORDER LX.

OFFICERS.

1. All officers who at the time of the commencement of the said act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively shall be attached to the Probate, Divorce and Admiralty Division of the said High Court.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to re-hearings in the Court of Appeal in Chancery, and as the masters and officers of the Courts of Queen's Bench, Common Pleas and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

ORDER LXI.

SITTINGS AND VACATIONS.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

2. See page 1.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. See page 1.

4a. (*Rule 15 of December, 1875.*) See page 20.

4b. (*Rule 9 of February, 1876.*) The offices of the Supreme Court (including the judges' chambers) shall close on Saturdays at two o'clock.

5. Two of the judges of the High Court shall be selected at the commencement of each long vacation for the hearing in London or Middlesex during vacation of all such applications as may require to be immediately or promptly heard. Such two judges shall act as vacation judges for one year from their appointment. In the absence of arrangement between the judges, the two vacation judges shall be the two judges last appointed (whether as judges of the said High Court or of any court whose jurisdiction is by the said act transferred to the said High Court) who have not already served as vacation judges of any such court, and if there shall not be two judges for the time being of the said High Court who shall not have so served, then the two vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other court as aforesaid. The lord chancellor shall not be liable to serve as a vacation judge.

6. The vacation judges may sit either separately or together as a divisional court as occasion shall require, and may hear and dispose of all actions, matters and other business to whichever division the same may be assigned. No order made by a vacation judge shall be reversed or varied except by a divisional court or the Court of Appeal, or a judge thereof, or the judge who made the order. Any other judge of the High Court may sit in vacation for any vacation judge.

7. The vacation judges of the High Court may dispose of all actions, matters and other business of an urgent nature during any interval between the sittings of any division of

the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

8. *Rule 10 of February, 1876.*) The official referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 2 p.m.; but nothing in this rule shall prevent their sitting on any other days.

ORDER LXII.

EXCEPTIONS FROM THE RULES.

Nothing in these rules shall affect the practice or procedure in any of the following causes or matters:—

Criminal proceedings:

Proceedings on the Crown side of the Queen's Bench Division:

Proceedings on the revenue side of the Exchequer Division:

Proceedings for Divorce or other Matrimonial Causes.

ORDER LXIII.

INTERPRETATION OF TERMS.

The provisions of the 100th section of the act shall apply to these rules.

In the construction of these rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:—

“Person” shall include a body corporate or politic:

“Probate actions” shall include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business:

“Proper officer” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:—

(a.) Where any duty to be discharged under the act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same:

(b.) Where any new duty is under the act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer

of the Supreme Court or the High Court of Justice, or the Court of Appeal, not attached to any division, by the lord chancellor, and in the case of an officer attached to any division, by the president of the division, and in the case of an officer attached to any judge, by such judge:

“The act” and “the said act” shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this act.

[The Appendix to these Rules is not given here, because never required in the practice at chambers, excepting two or three forms which will be found under their respective heads.]

RULES OF THE SUPREME COURT (COSTS).

12th August, 1875.

ORDER I.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

ORDER II.

The rules of court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

ORDER III.

Other affidavits than those required to be printed by Order XXXVIII. rule 6, in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the court or judge so order.

ORDER IV.

See page 107.

ORDER V.

Where, pursuant to rules of court, any pleading, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner pro-

vided by rule 2 of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875.

2. To enable the party printing, to print any deposition, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and $\frac{1}{2}$ *d.* per folio for every other copy.

4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.

5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the court or judge shall otherwise direct.

6. The party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.

7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the court or judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

10. See page 135.

11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or

set of affidavits, and copied on every office copy and copy furnished to a party.

12. The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

15. Where, by any order of the court (whether of appeal or otherwise) or a judge, any pleading, evidence, or other document is ordered to be printed, the court or judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

ORDER VI.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875:

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto—

In all actions for purposes to which any of the forms of indorsement of claim on writs of summons in Sections II., IV. and VII. in Part II. of Appendix A., referred to in the 3rd rule of Order III. in the schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions);

In all causes and matters by the 34th section of the Supreme

Court of Judicature Act, 1873, assigned to the Queen's Bench Division of the court;

In all causes and matters by the 34th section of the said act assigned to the Common Pleas Division of the court;

In all causes and matters by the 34th section of the said act assigned to the Exchequer Division of the court;

In all causes and matters by the 34th section of the said act assigned to the Probate, Divorce and Admiralty Division of the court;

And also in causes and matters by the 34th section of the said act assigned to the Chancery Division of the court in the following cases; (that is to say,)

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next of kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made shall be under the amount or value of 1,000*l*.
2. For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of 1,000*l*.
3. For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets or the estate or fund shall be under the amount or value of 1,000*l*.
4. For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of 1,000*l*.
5. And for specific performance in which the purchase-money or consideration shall be under the amount or value of 1,000*l*.
6. In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of 1,000*l*.
7. In all proceedings relating to the guardianship or maintenance of infants, in which the property of the infant shall be under the amount or value of 1,000*l*.
8. In all proceedings by original special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any railway or private act of parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of 1,000*l*.

2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "higher scale" in the schedule hereto; in all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property, and infringement of rights, easements, patents and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all other cases other than those to which the fees in the column headed "lower scale" are hereby made applicable.

3. Notwithstanding these rules, the court or judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

4. The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to these rules.

SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

August 12, 1875.

1. As to writs of summons requiring special indorsement, original special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

3. As to instructions to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

4. See page 33.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

10. See page 11.

11. See page 9.

12. A folio is to comprise seventy-two words, every figure comprised in a column being counted as one word.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

14. See page 11.

15. As to inspection of documents under Order XXXI. rule 14, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

16. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

17. Where a petition in any cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in court his costs

will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 2*l.* 2*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding 2*l.* 2*s.*

18. See page 33.

19. In any case in which, under the preceding rule No. 18, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

20. Where in the Chancery Division any question as to any costs is under the preceding rule 18 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

21. See page 12.

22. See page 35.

23. See page 175.

24. See page 175.

25. See page 176.

26. See page 176.

27. See page 176.

28. See page 176.

29. See page 177.

30. See page 177.

31. See page 178.

32. See page 178.

33. See page 179.

34. See page 30.

RULES OF THE SUPREME COURT.

December, 1875.

1. The rules in the first schedule to the Supreme Court of Judicature Act, 1875, may be cited as "The Rules of the Supreme Court," and the additional rules of court made by order in council on the 12th day of August, 1875, may be cited as "The Rules of the Supreme Court (Costs)," and these rules may be cited as "The Rules of the Supreme Court, December, 1875," or each separate one of these rules may be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the number of the Order and rule mentioned in the margin.

2. See page 212.

3. See page 214.

4. Order V. rule 12, of "The Rules of the Supreme Court," is hereby annulled.

5. See page 216.

6. See page 216.

7. See page 23.

8. Order XIII. rule 10, of "The Rules of the Supreme Court," is hereby annulled.

9. See page 230.

10. See page 28.

11. See page 30.

12. See page 238.

13. See page 239.

14. See page 239.

15. See page 20.

16. See page 256.

RULES OF THE SUPREME COURT.

February, 1876.

1. These rules may be cited as "The Rules of the Supreme Court, February, 1876," or each separate one of these rules may be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the number of the Order and rule mentioned in the margin.

2. Notwithstanding anything to the contrary contained in Order IV. of "The Rules of the Supreme Court," rules 1 and

2 of such Order shall only apply where the writ of summons is issued out of the London Office.

3. See page 20.
4. See page 214.
5. See page 23.
6. See page 45.
7. See page 252.
8. See page 253.
9. See page 258.
10. See page 259.

RULES OF THE SUPREME COURT.

June, 1876.

1. These rules may be cited as "The Rules of the Supreme Court, June, 1876," or each separate one of these rules may be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the number of the Order and rule mentioned in the margin.

2. See page 211.
3. See page 214.
4. See page 216.
5. See page 40.
6. See page 218.
7. See page 221.
8. See page 221.
9. See page 223.
10. See page 230.
11. See page 95.
12. See page 24.
13. See page 91.
14. See page 114.
15. See page 114.
16. See page 113.
17. See page 246.
18. See page 125.
19. See page 5.
20. The schedule to "The Rules of the Supreme Court (Costs)" is hereby altered in the following particulars:—

The allowance for printing a document not exceeding ten folios shall be 10s., and, in addition, for every twenty beyond the first twenty copies of any document not exceeding twenty-four folios, 2s.

INDEX.

ABATEMENT, plea in, abolished, 224.

ACCOUNTS, application for, 220.
and inquiries may be referred to district registrar, 19.
taking of, assigned to Chancery Division, 119.

ACTION assigned to Chancery Division, 118.
Queen's Bench Division, 119.
Common Pleas Division, 120.
Exchequer Division, 120.
Probate, Divorce and Admiralty Division, 120.
commenced in the name of wrong plaintiff, 64.
consolidate, to, 126.
dismissed for want of prosecution, 90.
form and commencement of, 211.
how tried, 238.
separation of several causes of, 75.
transfer from one division to another, 117.

ADDITION of parties, 62.

ADDITIONAL power as to regulation of practice, 208.
Rules of August, 1875..260.
December, 1875..267.
February, 1876..267. .
June, 1876..268.

ADDRESS for service of defendant, 8.
defendant's solicitor, 8.
plaintiff, 8.
in district registry, 20.
plaintiff's solicitor, 7.

ADJOURNMENT of summons, 10.
of trial, 240.

ADMISSION, 236.
of documents, 236.

AFFIDAVITS, 31.

- cross-examination of deponent, 31.
- evidence, 241.
- exhibits to, 33.
- filing, 33.
- form of, 31.
- fresh, on appeal, 6.
- jurats to, 32.
- name and description of deponent, 32.
- office copies of, 34.
- of service and attendance, 9.
- of unnecessary length, 33.

AFFIRMATION, oath includes, 202.**AMENDMENT of indorsement on writ, 44.**

- irregular proceedings, 169.
- pleadings, 83.
 - to plead after, 86.
- statement of claim, 85.
 - defence, 85.

APPEAL,

- from chambers, 6.
 - district registrar, 27.
 - high court, 184.
 - inferior courts, 204.
 - judge, 3.
 - notice of intention to appeal, 4.
 - master, 5.
 - no stay unless ordered, 6.
 - fresh affidavits may be used, 6.
- sittings of Court of, 204.

APPEAR and defend under Bills of Exchange Act, 49.

- affidavit in support of leave, 50.
- notice to plaintiff, 50.
- time within which application to be made, 50.
- in ejectment, 48.
- as landlord, 48.
- person appearing to be named as defendant, 49.
- leave to, to notice of claim to contribution, 75.

APPEARANCE, 217.

- default of, 219.
- default of, by infant, 61.
- entered in London, to proceed in London, 22.
- may be entered in district registry, 22.
- to counterclaim, 229.
- to set aside, 51.

APPLICATIONS at chambers, ex parte or by summons, 6.

- for account, 220.
- for time, 34.

APPOINTMENT of next friend and guardian ad litem, 59.

ARBITRATION. See "*Reference.*"

ARBITRATOR, attendance of witness before, 116.

ASSESSORS, 195.

ASSIGNMENT of debts and choses in action, 188.

ATTACHMENT, 249.

book, 147.

of debts, 142.

for disobedience to an order, 96.

ATTENDANCE at chambers, 1.

affidavit of service and, 9.

by counsel, 11.

of judge, 2.

of master, 2.

increased costs for, 11.

of party not interested, 13.

in support of summons, 9.

of district registrar, 20.

of witness before arbitrator, 116.

certificate for the, 116.

of prisoner to give evidence, 171.

BAIL, to hold to, 165.

to admit prisoner to, 172.

BANKRUPTCY, change of parties by, 67.

BILLS of costs, 173.

applications for delivery of, 174.

order to deliver, 174.

order to tax, 174.

reviewing taxation, 178.

BILLS of Exchange,

leave to appear and defend, 49.

affidavit in support, 50.

time within which application to be made, 50.

CARRIAGE of judges' order, 11.

CASES and points reserved, 194.

of conflict not enumerated, 190.

CAUSES of action that may not be joined without leave, 75.

to separate, 75.

for service out of jurisdiction, 39.

- CERTIFICATE for attendance of witness before arbitrator, 116.
for counsel, 11.
of satisfaction of judgment debt, 165.
- CERTIORARI to remove cause from county court, 130.
to remove judgment, 130.
- CHAMBERS, attendance at, 1.
attendance of judge at, 2.
of master, 2.
by counsel, 11.
of party not interested, 12.
- CHANCERY DIVISION, actions assigned to, 118.
- CHANGE of parties, no abatement, 250.
to vary order, 68.
venue, 107.
- CHARGING stock or shares, 148.
affidavit in support, 150.
order, 150.
penalty for permitting transfer after notice, 149.
service of order, 151.
- CHOSSES, assignment of, in action, 188.
- CIRCUIT, jurisdiction of judges on, 190.
- CLAIM, amendment of statement of, 85.
indorsements of, 212.
- CLOSE of pleadings, 231.
- COMMISSION to examine witnesses, 109.
- COMMISSIONERS to take affidavits, 198.
- COMMITTAL of judgment debtor, application for, 159.
summons for, 161.
must be indorsed, 161.
order for, 164.
certificate of satisfaction, 165.
- COMMON PLEAS DIVISION, actions assigned, 120.
- CONCURRENT writs, 47.
- CONDITIONAL execution, 140.
- CONSENT, orders by, no appeal from, 3.
unless by district registrar, 27.
of reference, 115.
of president to transfer, 124.

- CONSOLIDATE, actions to, 126.
order, 126.
- CONSTITUTION and judges of Supreme Court, 182.
- CONTENTS of summons, 7.
- CONTINGENT execution, 140.
- CONTRIBUTION, leave to give notice of, 69.
form of notice, 73.
- COPY of affidavit, to obtain, 34.
- COSTS, 252.
additional rules as to, 260.
of attendance at chambers by counsel, 11.
of affidavits of unnecessary length, 33.
of application for time, 35.
garnishee, 147.
increased costs of attendance, 11.
summons for, through non-attendance, 9.
occasioned by prolixity, 211.
- COUNSEL, attendance at chambers by, 11.
hours of attendance by, 11.
certificate for, 11.
costs of attendance by, 11.
- COUNTER-CLAIM, to strike out, 78.
amendment of, 85.
- COUNTERMAND notice of trial, 109.
- COUNTY COURT, to try in, 127.
or give security, 129.
removal of cause from, 130.
judgment, 130.
when counter-claim, &c., 131.
- CRIMINAL procedure, provision as to, 206
- CROSS-EXAMINATION of deponent, 31.
- CROWN cases reserved, 194.
- DAMAGES by collisions at sea, 189.
- DATE of summons, 7.
- DAYS not reckoned in computation of time, 36.
- DEATH, change of parties by, 67.

DEBTOR. See "*Judgment Debtor*."

DEBTS, assignment of, in action, 188.
attachable, 144.
not attachable, 144.

DECISION of judge, appeal from, 3.
of master, appeal from, 5.

DEFAULT of appearance, 219.
by infant, 61.
of pleadings, 233.

DEFENCE, amendment of statement of, 85.
further statement of, 81.

DEFENDANT, addition of, 64.
address for service of, 8.
may remove action in certain cases from district registrar, 28.

DELIVERY, writ of, 250.

DEMURRER, 231.
leave to plead and demur to, 82.
no amendment allowed while pending, 83.
to set aside, 87.

DEPONENT to affidavit, cross-examination of, 31.
name and description of, 32.

DETENTION of property, order for, 136.

DISCHARGING judges' order, 3.

DISCLOSURE by solicitors and plaintiff, 215.

DISCONTINUANCE, 230.

DISCOVERY. See "*Documents, Inspection and Interrogation*."
of documents, 98.

DISMISSED action, for want of prosecution, 90.
for non-delivery of notice of trial, 91.
for non-delivery of statement of claim, 90.
not answering interrogations, &c., 96.

DISTRIBUTION of business, 193.

DISTRICT REGISTRARS AND REGISTRIES, 14.
account and inquiries may be referred to, 19.
appearance may be entered in, 22.
entered in London to proceed in London, 22.
notice to plaintiff of, 23.

DISTRICT REGISTRARS AND REGISTRIES—*continued*.

- appeal from, 27.
 - no stay, 27.
 - from consent order of, 27.
- attendance of, at, 20.
- defendant may remove action in certain cases, 28.
- judgment may be entered in, for want of appearance, 24.
- judgment to be entered in London, 25.
- jurisdiction of, 25.
- list of, 16.
- may be established, 14.
- may refer to judge, 26.
- notice of desire to remove action from, 29.
- plaintiff may issue writ out of, 20.
- power of court to remove proceedings from, 18.
- powers of, 17.
 - similar to master's, 25.
- proceedings to be taken in, 18.
 - to remove at the instance of either party, 29.
- seal of, 17.
- subject to the orders of the court, 27.
- transmission of documents, 30.
- to account for monies, 30.

DISTRINGAS, 249.

DIVISIONAL COURTS, 191, 193.

DOCUMENTS, admission of, 236.

- to discover, 98.
 - affidavit as to, 99.
- to inspect, 101.
 - order, 102.
 - affidavit in support, 101.
- notice to produce, 103.
 - before arbitrator, 116.
- notice to inspect, 103.
- to be transmitted by district registrar, 30.
- to take off the file, 33.

DURHAM, duties of officers of court of pleas of, 196.

EJECTMENT, to sign judgment in, 57.

- to appear and defend, 48.

ELEGIT, writs of, 248.

ENDORSEMENT, judges', 11.

ENTRY of judgment, 244.

EQUITABLE wastes, 188.

- EQUITY and law to be concurrently administered, 185.
- EVIDENCE generally, 241.
by affidavit, 241.
for prisoner to give evidence, 171.
- EXAMINATION of judgment debtor as to debts due, 142.
of witness *vivâ voce*, 108.
- EXCEPTIONS from the rules, 259.
- EXCHEQUER DIVISION, actions assigned to, 120.
- EXECUTION, leave to issue, 140.
against partners, 141.
conditional or contingent, 140.
six years after judgment, 141.
- EXHIBITS, 33.
- EX PARTE application, 6.
- EXPERIMENTS, making, 136.
- EXPIRATION of time, 35.
- FACT, issues of, may be tried separately, 77.
- FIERI FACIAS, writs of, 248.
- FILING affidavits, 33.
- FINAL judgment, where writ specially indorsed, 51.
in case of non-appearance, 53.
affidavit in support, 55.
defendant may show cause, 55.
may be for part of claim, 56.
may be against one defendant, 56.
- FIXING and collection of fees, 208.
- FOREIGNER, jurat, 32.
- FORMS of special indorsements, 52.
and commencement of action, 211.
- FRESH affidavits may be used on appeal from master, 6.
- GARNISHEE, to attach debt due from, 143.
affidavit in support, 144.
costs of proceedings, 147.
discharged, 147.

GARNISHEE—*continued*.

interpleader, 146.

order, 146.

order nisi, 144.

absolute, 145.

GOODS of perishable nature, order for sale of, 136.**GUARDIAN AD LITEM**, appointment of, 60.

affidavit in support of appointment, 60.

when not appointed, 60.

HIGH COURT OF JUSTICE, jurisdiction of, 182.**HOURS** of attendance at chambers, 1.

by counsel, 11.

for service, 7.

in Lancashire, 9.

ILLNESS, examination of witness in consequence of, 108.**INCREASED** costs for attendance at chambers, 11.**INDEMNITY**, leave to give notice of, 69.

form of notice, 73.

INDORSEMENT of claim, 212.

on writ to amend, 44.

special form of, 52.

INFANT, 190.

appointment of next friend to, 59.

guardian ad litem, 60.

affidavit in support, 60.

death of guardian, 60.

service of writ on, 38.

default of appearance by, 61.

INFERIOR COURTS, appeal from, 204.

jurisdiction of, 199.

rules of law to apply to, 200.

IN FORMA PAUPERIS, leave to sue, 170.

affidavit in support, 171.

consent of counsel, 171.

petition, 170.

INJUNCTION, *ex parte*, 133.

affidavit in support, 134.

principle upon which granted, 134.

summons for, 135.

- INQUIRIES and accounts, 236.
 may be referred to district registrar, 19.
- INSPECTION of documents. See "*Documents*."
 of property, 136.
- INTERPLEADER, 151.
 affidavit in support, 152.
 of claimant, 152, 153.
 claimant not appearing, 154—156.
 costs, 154.
 execution creditor not appearing, 154.
 for relief of sheriffs, 157.
 garnishee, 146.
 judge. may direct sale of goods seized, 154.
 may decide summarily, 154.
 may order special case, 155.
 may refer to the court, 157.
 judgment to be final, 156.
 order, form B., 153.
 principles of, 152.
 right of third party to appear, 155.
 sheriffs, 152.
- INTERPRETATION of terms, 200—259.
- INTERROGATORIES, to deliver, 91.
 affidavit in support, 92.
 by whom made, 92.
 in answer, 95.
 sufficiency of, 95.
 costs, 94.
 failure to answer, action dismissed, 96.
 form of, 93.
 objections to answer, for special reasons, 95.
 when bad in substance, 97.
 omission or insufficient answer, 96.
 time for delivery of, 91.
 to a body corporate or joint stock company, 93.
 to strike out, 97.
 when allowed before statement of defence, 92.
 not allowed, 97.
- IRREGULARITY, to set aside proceedings for, 168.
 to be made within reasonable time, 169.
- ISSUES of fact may be tried separately, 77.
 to settle, 88.
 of writs of summons generally, 213.
 in particular actions, 214.

JOINDER of causes of action, 222.

JOINT stock company, to rectify omissions in register, 169.
to deliver interrogatories to, 93.

JUDGE, attendance of, at chambers, 2.
endorsement, 11.
jurisdiction of, 2.
on circuit, 190.
order, 11.
carriage of, 11.
discharge of, 3.
notice of motion to discharge, 4.
service of, 11.
vary, to, 3.

JUDGMENT for want of appearance may be entered in district
registry, 24.
entry of, 244.
to set aside, 58.
to sign final, 51.
motion for, 243.
in ejectment, 57.
leave to set down motion for, 138.
writ specially indorsed, 51.

JUDGMENT debtor, committal of, 159.
summons for, 161.
for examination as to debts due, 142.
order by consent, 163.
on affidavit of service, 163.
for payment by instalments, 163.
to attend, 163.
proof of means, 162.
certificate of satisfaction, 165.

JURAT used at chambers, 32.
foreigner, 32.
marksman, 32.

JURISDICTION of district registrars, 25.
of inferior courts, 199.
of High Court of Justice, 182.
of judge at chambers, 2.
on circuit, 190.
of master, 4.
of lords justices in respect of lunatics, 203.
not transferred to High Court, 183.
transferred to Court of Appeal, 184.
rules as to exercise of, 185.

- LANCASHIRE, hours for service in, 9.
duties of officers of Court of Common Pleas at, 196.
- LAND, suits for possession of, 188.
service of writ in vacant possession, 58.
- LAW and equity to be concurrently administered, 185.
- LEAVE to appear and defend bill of exchange, 49.
in ejectment, 48.
to defend to writ specially indorsed, 57.
to deliver copies of special case, 107.
to give notice of contribution or indemnity, 69.
form of notice, 73.
to renew writ, 45.
to serve notice of motion, 44.
to set down motion for judgment, 138.
to sue in formâ pauperis, 170.
- LIMITATIONS, STATUTE OF, inapplicable to express trusts, 188.
- LIST OF DISTRICT REGISTRIES, 16.
- LIVERPOOL, hours for service in, 9.
- LONDON, sittings for trial in, 191.
- LUNATIC, service of writ on, 39.
jurisdiction of lords justices in respect of, 203.
- MANCHESTER, hours of service in, 9.
- MARKSMAN, jurat, 32.
- MARRIAGE, change of parties by, 67.
- MARRIED woman, appointment of next friend of, 62.
special case, 106.
- MASTER, appeal from, 5.
materials, 6.
no stay, 6.
attendance at chambers of, 2.
jurisdiction of, 4.
may refer to judge for directions, 5.
order of, to vary, 6.
reference to, 110.
- MERGER, 188.
- MIDDLESEX, sittings for trial in, 191.

- MOTION for judgment, 243.
 for leave to set down, 138.
 for leave to serve notice of, 44.
 for new trial, 242.
 to discharge judges' order, notice of, 4.
- NEXT FRIEND, appointment of, 59.
 of infant, 59.
 of married woman, 62.
 of person of unsound mind, 60.
- NON-APPEARANCE, to sign judgment in case of, 53.
- NON-ATTENDANCE in support of summons, 9.
 of claimant, 154—156.
 of execution creditor, 154.
- NON-DELIVERY of paper books, effect of, 107.
 of statement of claim, action dismissed, 90.
 of notice of trial, 91.
- NOT GUILTY by statute, to plead other defence with, 82.
- NOTICE of motion, leave to serve with writ, 44.
 to discharge judges' order, 4.
 of indemnity or contribution, 73.
 of payment of money into court, 90.
 of trial, to countermand, 109.
 non-delivery of action dismissed, 91.
 to inspect. See "*Documents.*"
 to produce affidavits on appeal, 6.
 documents. See "*Documents.*"
- NOTICES and paper, 252.
- NUNC PRO TUNC, to deliver special case, 107.
- OATHS, powers of commissioners to administer, 198.
- OFFICE copies of affidavits, 34.
- OFFICERS and offices, 196.
- OFFICIAL referees to be appointed, 198.
 to refer to, 111.
- OPTION of plaintiff to choose division, 121.
 in certain cases, 122.
 to join all or any defendants, 65.
- ORDERS by consent, no appeal from, 3.
 unless by district registrar, 27.
 discharging, 3.
 for arrest, 167.

ORDERS—*continued*.

- for examination of judgment debtor as to debts due, 143.
- for sale of goods, &c. of a perishable nature, 136.
- for service out of the jurisdiction, 42.
- for substituted service, 38.
- garnishee interpleader, 146.
- judges, ' appeal from, 3.
 - carriage of, 11.
 - discharge of, 3.
 - service of, 11.
 - to vary, 3.
 - notice of motion to discharge, 4.
- master's appeal from, 6.
- not subject to appeal, 3.
- to consolidate, 126.
- to charge stock, 150.

- PAPER books, to deliver *nunc pro tunc*, 107.
 - number of, to be delivered, 106.
 - and notices, 252.

- PARTIES, attendance of, at chambers, not interested, 12.
 - to add, 62.
 - to substitute, 62.
 - to strike out, 62.

- PARTNERS, execution against, 141.
 - service of writ on, 216.

- PAYMENT into court in satisfaction, 89.

- PERSONS of unsound mind, appointment of next friend, 60.

- PLAINTIFF'S address for service, 8.
 - in district registry, 20.
 - substitution of, 64.
 - may issue writ out of any district registry, 20.
 - disclosure by, 215.

- PLEAD, leave to, when necessary, 81.
 - subsequent to reply, 81.
 - and demur to demurrer, 82.
 - other defence, with not guilty by statute, 82.

- PLEADINGS, to amend, 83.
 - amendment may be at any stage, 84.
 - after amendment, 86.
 - close of, 231.
 - default of, 233.
 - generally, 222.
 - matter arising pending the action, 227.

- POSSESSION, writ of, 250.
- POWER by order in council, 199.
of inferior courts, 199.
of a single judge in Court of Appeal, 195.
of commissioners to administer oaths, 198.
- PRESERVATION of property, 136.
- PRESTON, hours for service at, 9.
- PRINCIPLES of interpleader, 152.
- PRISONER, to admit to bail, 172.
affidavit, 172.
to give evidence, 171.
affidavit, 172.
under civil process, to give evidence, 172.
- PROBATE, DIVORCE and ADMIRALTY DIVISIONS, actions assigned,
120.
- PROCEEDINGS at chambers, 6.
may be set aside for irregularity, 168.
out of master's jurisdiction, 4.
to be taken in district registry, 18.
to stay, 131.
under the Judgment Debtors Act, 17.
- PROHIBITION, 131.
- PROPERTY, detention, preservation and inspection of, 136.
held by virtue of lien to be given up, 138.
- PROVISION as to criminal proceedings, 206.
as to making rules of court, 205.
for Crown cases reserved, 194.
for saving of existing procedure of courts, 207.
- QUEEN'S BENCH DIVISION, actions assigned to, 119.
- QUESTIONS of law, 237.
- REFEREES and assessors, 195.
- REFERENCE to master, 110.
to official or special referee, 111.
by consent, 115.
form of consent, 115.
attendance of witnesses, 116.
form of certificate for, 116.
of prisoner to give evidence, 171.
affidavit for, 172.

REGISTRIES. See "*District Registries*."

RELIEF on admission of facts, 139.

REMOVAL of cause from county court, 130.
from district registry, 18.
in certain cases by defendant, 28.
of judgment from county court, 130.

RENEWAL of writ, 45.
evidence of, 215.

REPLY and subsequent pleadings, 230.
leave to plead subsequent to, 81.
deliver further defence after, 81.

RESCIND master's order, 6.

REVIEWING taxation of costs, 178.

RULES as to exercise of jurisdiction, 185.
of court, provisions as to making, 205.
of law to apply to inferior courts, 200.
upon certain points, 187.

SALE of goods of a perishable nature, 136.

SAMPLES, taking, 136.

SATISFACTION of judgment debt, certificate of, 165.
payment into court in, 89.

SEALS of district registries, 17.

SECURITY, 252.
for costs, or try in county court, 129.

SEPARATION of causes of action joined, 75.

SEQUESTRATION, writ of, 249.

SERVICE of writ, 216.
on partners and other bodies, 216.
in particular actions, 216.
generally, 217.
out of the jurisdiction, 39.
causes of action for service out of the jurisdiction, 39.
affidavit in support, 41.
substituted, 37.
of summons, 7.
and attendance, affidavit of, 9.
address for, of plaintiff, 8.
in district registry, 20.
of defendant, 8.

SERVICE—*continued.*

- hours for, 7.
- in Lancashire, 9.
- of order for time, 36.

SHARES, charging, 148.

SIGN judgment in ejectment, 57.
when no appearance, 57.
when writ posted on vacant land, 58.

SITTINGS and vacations, 257.
in vacation, 190.
of court of appeal, 204.
for trial in London and Middlesex, 191.

SIX years after judgment to issue execution, 141.

SOLICITORS and attorneys, 198.
bill of costs, taxation of, 174.

SPECIAL case, 105.
delivery of, to judges, 106.
may be stated by reference, 112.
printing, 106.
indorsements, forms of, 52.

SPECIAL referee. See "*Reference.*"

STATEMENT of claim, 227.
amendment of, 85.
non-delivery of, action dismissed, 90.

STATEMENT of defence, 228.
amendment of, 85.
to deliver further, 81.

STATUTE of Limitations, inapplicable to express trusts, 188.

STIPULATIONS not of the essence of contracts, 189.

STOCK, charging, 148.

STRIKE out or substitute parties, 62.
counter-claim, 78.

SUBSTITUTED service of writ, 37.
affidavit in support of, 37.

SUITS for possession of land by mortgagors, 188.

SUMMARY power to transfer, 123.

SUMMONS, adjournment of, 10.

- attendance in support of, 9.
- contents of, 7.
- date of, 7.
- how issued, 7.
- non-attendance in support of, 9.
- title of, 7.
- service of, 7.
- when a stay, 7.
- on appeal from master, 6.
- for costs, through non-attendance, 9.
- affidavit of service and attendance on, 9.

TAXATION, reviewing, 178.

TIME, application for, 34.

- allowed to appeal from judge's decision, 6.
- costs of application, 35.
- days not reckoned in computation, 36.
- long vacation not reckoned, 36.
- service of order for, 36.
- when expiring on Sunday or when office closed, 35.

TITLE of summons, 7.

TO HOLD TO BAIL, 165.

TRANSFER of action from one division to another, 117.

- books and papers to superior court, 200.
- consent of president, 124.
- materials in support of application to, 124.
- power to, 122.
- summary power to, 123.

TRIAL and procedure, 238.

- to countermand notice of, 109.

VACATIONS, 1.

- attendance of judge and master during, 2.
- not reckoned in computation of time, 36.
- sittings in, 190.

VARY, judge's order, to, 3.

- master's order, to, 6.

VENUE, to change, 107.

WANT of prosecution, action dismissed, 90.

WIFE, service of writ on, 38.

WITNESS, to examine, 108.

affidavit in support of application, 109.

proof of continued absence of, 109.

to compel attendance before arbitrator, 116.

WRIT of summons and procedure, 211.

applications relating to the, 37.

amendment of indorsement on, 44.

date of, 212.

may be issued out of district registry, 20.

renewal, 45.

service of, on infant, 38.

lunatic, 39.

partners, 216.

wife, 38.

out of the jurisdiction, 39.

affidavit in support, 41.

substituted service, 37.

affidavit in support, 37.

of delivery, 250.

of elegit, 248.

of fieri facias, 248.

of possession, 250.

of sequestration, 249.

concurrent, 47.

to sign judgment when specially indorsed, 51.

to set aside the, 48.

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